Arbitration Between Peru and Chile

THE CASE OF PERU

In the matter of the controversy
arising out of the

QUESTION OF THE PACIFIC

Before the

President of the United States of America

Arbitrator

Under the

Protocol and Supplementary Act between the Republic of Peru and the Republic of Chile, signed July 20, 1922, at Washington, D. C., ratified January 15, 1923

WASHINGTON, D. C.
1923

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NATIONAL CAPITAL PRESS, INC., WASHINGTON, D. C.

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Arbitration Protocol

Being assembled in Washington, D. C., in response to the invitation of the Government of the United States of America, for the purpose of arriving at a settlement of the long-standing controversy, with respect to the unfulfilled provisions of the Peace Treaty of the 20th of October, 1883, the undersigned, representing Peru and Chile, to wit:

Mr. Meliton F. Porras and Mr. Hernan Velarde, Envoys Extraordinary and Ministers Plenipotentiary of Peru on Special Mission; and

Mr. Carlos Aldunate and Mr. Luis Izquierdo, Envoys Extraordinary and Ministers Plenipotentiary of Chile, on Special Mission;

after having exchanged their respective full powers, are agreed upon the following:

Article 1. It is herein recorded that the only difficulties arising out of the Treaty of Peace concerning which the two countries have not been able to reach an agreement, are the questions arising out of the unfulfilled provisions of Article 3 of said Treaty;

Article 2. The difficulties to which the preceding article refers will be submitted to the arbitration of the President of the United States of America who shall decide them finally and without appeal, hearing both Parties and after due consideration of the arguments and evidence which they may adduce. The terms and procedure shall be determined by the Arbitrator.

Article 3. The present Protocol shall be submitted to the approval of the respective Governments and the

ratifications exchanged in Washington, D. C., through the Diplomatic Representatives of Peru and Chile, within the maximum period of three months.

Signed and sealed in duplicate, in Washington, D. C. this twentieth day of July, nineteen twenty-two.

L. S. (Signed) M. F. Porras
L. S. (Signed) Hernán Velarde
L. S. (Signed) Carlos Aldunate
L. S. (Signed) L. Izquierdo

Protocolo de Arbitraje

Reunidos en Wáshington, D. C., en conformidad a la invitación del Gobierno de los Estados Unidos de América, para procurar la solución de la larga controversia relacionada con las disposiciones no cumplidas del Tratado de Paz, de 20 de octubre de 1883, los infrascritos, en representación del Perú y de Chile, a saber:

Don Melitón F. Porras y don Hernán Velarde, Enviados Extraordinarios y Ministros Plenipotenciarios del Perú en Mision Especial; y

Don Carlos Aldunate y don Luís Izquierdo, Enviados Extraordinarios y Ministros Plenipotenciarios de Chile en Misión Especial;

después de canjear sus respectivos plenos poderes, han acordado lo siguiente:

Artículo 1°.—Queda constancia de que las únicas dificultades derivadas del Tratado de Paz sobre las cuales los dos Países no se han puesto de acuerdo, son las cuestiones que emanan de las estipulaciones no cumplidas del artículo 3° de dicho Tratado.

Artículo 2°.—Las dificultades a que se refiere el artículo anterior serán sometidas al arbitraje del Presidente de los Estados Unidos de América, quien las resolverá sin ulterior recurso, con audiencia de las Partes y en vista de las alegaciones y probanzas que éstas presenten. Las plazos y procedimientos serán determinados por el Arbitro.

Artículo 3°.—El presente Protocolo será sometido a la aprobación de los respectivos Gobiernos y las ratificaciones serán canjeadas en Wáshington, D. C., por

intermedio de los Representantes diplomáticos del Perú y de Chile, dentro del plazo máximo de tres meses.

Firmado y sellado en doble ejemplar, en Wáshington, D. C., el veinte de julio de mil novecientos veintidós.

L. S. (Firmado): M. F. Porras
L. S. (Firmado): Hernán Velarde
L. S. (Firmado): Carlos Aldunate
L. S. (Firmado): L. Izquierdo

Supplementary Act

For the purpose of defining the scope of the arbitration provided for in Article 2 of the Protocol subscribed upon this same date, the undersigned are agreed to leave on record the following points:

1. Included in such arbitration is the following question, brought up by Peru in the session of the Conference of the 27th of May last:

> "In order to determine the manner in which the stipulations of Article 3 of the Treaty of Ancon shall be fulfilled, it is agreed to submit to arbitration the question whether, in the present circumstances, a plebiscite shall or shall not be held."

The Government of Chile may submit to the Arbitrator such arguments in reply as may seem appropriate for its defence.

2. In case the holding of the plebiscite should be declared in order, the Arbitrator is empowered to determine the conditions thereof.

3. Should the Arbitrator decide that a plebiscite need not be held, both Parties, at the request of either of them, shall discuss the situation brought about by such award.

It is understood, in the interest of peace and good order, that in such an event and pending an agreement as to the disposition of the territory, the administrative organization of the provinces shall not be disturbed.

4. In the event that no agreement should ensue, both Governments will solicit, for this purpose, the good offices of the Government of the United States of America.

5. Included in the arbitration likewise are the claims pending with regard to Tarata and Chilcaya, according to the determination of the final disposition of the territory to which Article 3 of the Treaty refers.

This Agreement is an integral part of the Protocol to which it refers.

Given under our hands and seals, in duplicate, in Washington, D. C., this twentieth day of July, nineteen twenty two.

L. S. (Signed) M. F. Porras
L. S. (Signed) Hernán Velarde
L. S. (Signed) Carlos Aldunate
L. S. (Signed) L. Izquierdo

Acta Complementaria

A fin de precisar el alcance del arbitraje estipulado en el artículo 2°. del Protocolo suscrito en esta fecha, los infrascritos acuerdan dejar establecidos los siguientes puntos:

1°. Está comprendida en el arbitraje la siguiente cuestión promovida por el Perú en la reunión celebrada por la Conferencia el 27 de mayo último:

> "Con el objeto de determinar la manera en que "debe darse cumplimiento a lo estipulado en el "artículo 3°. del Tratado de Ancón, se somete a "arbitraje si procede o nó, en las circunstancias "actuales, la realización del plebiscito."

El Gobierno de Chile puede oponer, por su parte, ante el Arbitro todas las alegaciones que crea convenientes a su defensa.

2°. En caso de que se declare la procedencia del plebiscito, el Arbitro queda facultado para determinar sus condiciones.

3°. Si el Arbitro decidiera la improcedencia del plebiscito, ambas Partes, a requerimiento de cualquiera de ellas, discutirán acerca de la situación creada por este fallo.

Es entendido, en el interés de la paz y del buen orden, que, en este caso, y mientras esté pendiente un acuerdo acerca de la disposición del territorio, no se perturbará la organización administrativa de las Provincias.

4°. En caso de que no se pusieran de acuerdo, los dos Gobiernos solicitarán para este efecto los buenos oficios del Gobierno de los Estados Unidos de América.

5°. Están igualmente comprendidas en el arbitraje

las reclamaciones pendientes sobre Tarata y Chilcaya, según lo determine la suerte definitiva del territorio a que se refiere el artículo 3°. de dicho Tratado.

Esta Acta forma parte integrante del Protocolo de su referencia.

Firmada y sellada, en doble ejemplar, en Wáshington, D. C., el veinte de julio de mil novecientos veintidós.

L. S. (Firmado): M. F. Porras
L. S. (Firmado): Hernán Velarde
L. S. (Firmado): Carlos Aldunate
L. S. (Firmado): L. Izquierdo

THE CASE OF PERU

TERMS OF SUBMISSION

The issue submitted by this arbitration proceeding arises out of the controversy between Peru and Chile, which has extended over a period of forty years last past. It has to do with the status of the Peruvian provinces Tacna and Arica, and the non-execution of Article III of the Treaty of Ancon, of October 20, 1883. This Treaty was imposed upon Peru by Chile, the victor in the war of the Pacific which lasted from 1879 to 1883.

For thirty years Peru has made repeated efforts to obtain a settlement of this controversy with Chile. Up to the present time all negotiations have failed. This proceeding is the result of the friendly offer of mediation made by the United States in the interest of peace and good-will of the Americas, in an effort finally to dispose of this "question of the Pacific."

By reason of the conferences held in Washington in 1922 between the plenipotentiaries of Peru and Chile, under the auspices of the Government of the United States, a protocol of arbitration was entered into between the representatives of Peru and Chile, and signed under date of July 20, 1922. This protocol provides as follows:

> "Article 1. It is herein recorded that the only difficulties arising out of the Treaty of Peace concerning which the two countries have not been able to reach an agreement, are the questions arising out of the unfulfilled provisions of Article 3 of said Treaty;
>
> "Article 2. The difficulties to which the pre-

ceding article refers will be submitted to the arbitration of the President of the United States of America who shall decide them finally and without appeal, hearing both Parties and after due consideration of the arguments and evidence which they may adduce. The terms and procedure shall be determined by the Arbitrator."

Coincident with the execution of the protocol a supplementary act was signed by the representatives of Peru and Chile which contained the following language:

"1. Included in such arbitration is the following question, brought up by Peru in the session of the Conference of the 27th of May last:

"In order to determine the manner in which the stipulations of Article III of the Treaty of Ancon shall be fulfilled, it is agreed to submit to arbitration the question whether, in the present circumstances, a plebiscite shall or shall not be held."

"The Government of Chile may submit to the arbitrator such arguments in reply as may seem appropriate for its defence."

The Protocol and Supplementary Act recognize the fact that the plebiscite originally provided for by the Treaty of Ancon of 1883 was not carried out in 1894 as contemplated by and in accordance with that Treaty. It also recognizes, by raising the question whether "in the present circumstances" the plebiscite shall or shall not be held, that there has been a change in the circumstances contemplated by the Treaty. As this Case will endeavor to demonstrate, the plebiscite was not carried out at the proper time, namely, ten years after the ratification of the Treaty of Ancon, because the Chilean Government evidently found it to its interest not to have the plebiscite held at the time the Treaty provided and interposed obstacles to the timely execution

of the Treaty, and has since that time, namely 1894, initiated and pursued measures of oppression and coercion in the occupied territory of Tacna and Arica by driving out numberless Peruvian inhabitants, suppressing all Peruvian influences and subsidizing the introduction of a Chilean population; and that the "present circumstances" have through Chile's arbitrary action over a period of thirty years and the death of many of the inhabitants of the territories living in 1894, so vastly changed over those of 1894 contemplated by the Treaty, that a plebiscite under the "present circumstances" prevailing in the territory would be not an execution but a mockery of the Treaty of Ancon.

Inasmuch as the Protocol of Arbitration leaves it to the Honorable Arbitrator to determine whether, in the light of these completely altered circumstances, a plebiscite should now be held, it necessarily imposes upon him the duty of considering all the factors, historical, legal and equitable, which bear upon the matter. The equities of the case are particularly controlled by the historical facts, and it is to these that special consideration will be given. From an examination of these facts, of which the records of the Department of State are believed to furnish ample evidence, it will appear that the Chilean policy since 1842 has been one of continuous aggression in the appropriation, by force of arms, of the territory and natural resources of her neighbors, Bolivia and Peru, and that the successful accomplishment of these aims imposed by unconscionable treaties of peace, ought not to be further rewarded by the sanctioning of any arrangement whose effect would be to hand over to Chile the additional territory of Tacna and Arica, to which Chile has neither a moral nor a legal claim. On the contrary, this Case will, it is believed, make it clear that Chile's relation to Tacna and Arica was during the ten years, 1884–1894, that of

a temporary military occupant; and when after 1894, Chile declined to evacuate the territory or to permit an honest plebiscite to be held, as the Treaty of Ancon provided, she became a trespasser and wrongdoer. The sanctioning of any arrangement, therefore, which might enable Chile to obtain a legal title to territory in which she is and has since 1894 been a trespasser would but create in Latin America the conviction that might makes right and would not promote the peace of the continent.

The issue in controversy arises out of the non-fulfillment of Article III of the Treaty of Peace concluded between Chile and Peru on October 20, 1883. It becomes important, therefore, to examine the exact wording of that Article. It reads as follows:

> "The territory of the provinces of Tacna and Arica, bounded on the North by the River Sama, from its source in the Cordilleras bordering Bolivia to its disemboguement into the sea; on the South by the ravine and river of Camarones; on the East, by the Republic of Bolivia; and on the West, by the Pacific Ocean, shall continue in the possession (*continuará poseído*) of Chile, subject to Chilean legislation and authority for a period of ten years from the date of the ratification of the present treaty of peace. At the expiration of that term, a plebiscite will decide, by popular vote, whether the territory of the provinces above mentioned is to remain (*queda*) definitely under the dominion and sovereignty of Chile or is to continue to constitute a part (*continúa siendo parte*) of Peru. That country of the two to which the provinces of Tacna and Arica thus remain annexed (*queden anexadas*) shall pay to the other ten millions of pesos of Chilean silver or of Peruvian soles of equal weight and fineness.
>
> "A special protocol, which shall be considered an integral part of the present treaty, will determine the form in which the plebiscite is to be carried out and the terms and time for the payment of

the ten millions by the nation which remains the owner (*dueño*) of the provinces of Tacna and Arica."

From this Article it will be observed that the territory of Tacna and Arica was to "*continue in the possession* (*continuará poseído*) of Chile, subject to Chilean legislation and authority for a period of ten years from the date of the ratification of the present treaty of peace." The Treaty was ratified on March 28, 1884, so that under the terms of the Article just quoted, the plebiscite should have been held on March 28, 1894. On that date, which marked the expiration of the ten year period of legal occupation, a plebiscite was to decide "by popular vote" whether the territory of the provinces was to remain definitely under the dominion and sovereignty of Chile, or was "*to continue to constitute a part of Peru.*" Inasmuch as the treaty was drafted practically by the conqueror, Chile, this language is especially significant because it recognizes that the territory of Tacna and Arica would, during the entire ten year period "constitute a part of Peru" and only under two conditions, first, the holding of a plebiscite in 1894, and second, its favorable outcome for Chile, would Chilean sovereignty commence in the occupied provinces. As will be shown hereafter, it was not doubted at that time even by the Chilean negotiators that Chile was a mere possessor and occupant, holding the territory, under the most favorable interpretation, by way of guaranty for the payment of an indemnity. Chile merely inserted the additional aspiration that if the inhabitants, then admittedly almost exclusively Peruvian, should vote for Chilean sovereignty, Chile would become not merely an occupant but sovereign in the territory and compensate Peru for her loss by payment of 10,000,000 Chilean pesos.

The plebiscite has never been held, notwithstanding

the earnest efforts of Peru since 1892 to have it held under the conditions prevailing in 1894, the only conditions which would constitute a fair execution of the Treaty of Peace. Peru has, without yielding its claim of right, made innumerable concessions to Chile, all designed to bring the plebiscite to realization under tolerable conditions. Until 1922, when after thirty years the policy of "Chilenization" was presumably deemed to have achieved sufficient success to assure a Chilean victory in case of a vote held today, Chile's policy has been to oppose a plebiscite by every possible means, her evasions going to the point of asserting in 1905 and 1908, by way of justification, that the provision for a plebiscite was never intended to be carried out, but was merely a method of disguising an annexation to the Peruvian people. The policy of oppressing and driving out of Tacna and Arica the law-abiding Peruvian natives and nationals, whose principal offense was a maintenance of loyalty to their native country, and the artificial colonization of the territories by subsidized Chilean immigrants, have so changed the conditions in the territories in question that the "present circumstances" in no sense reflect the conditions of 1894, and so markedly alter them that a plebiscite of the present population would hardly bring to the polls any of the voters eligible to vote in 1894. Towards this objective the Chilean policy has been directed, as will be amply demonstrated by the documents and evidence adduced in this Case. A plebiscite today, therefore, would crown with legality an unconscionable act of conquest and a policy of terrorism, the legalization of which would be likely to undermine the moral foundations of the South American continent.

It has been Peru's desire, from the beginning, to carry out, as provided in the Treaty of Peace, the provision for a plebiscite, under the conditions prevailing

in 1894, as that Treaty contemplated. It has even been willing, Chile having prevented the timely holding of the plebiscite, to have it held a few years later, foregoing in the interests of a settlement, some of its legal rights. But since the initiation and continued execution of the Chilean policy of "Chilenization," with its cruelty, terrorism and violation of moral principles, have been directed to suppressing every Peruvian influence and voice in the occupied territories, a plebiscite today would not constitute an execution of the Treaty of Ancon, but would, on the contrary, evidence contempt for that Treaty and reward by tacit approval the unconscionable acts of Chile in violation of that Treaty.

To such a result no self-respecting nation could commit itself. As, therefore, a plebiscite under the conditions prevailing in 1894 is now a manifestly impossible condition, Peru must take the position of objecting to a plebiscite to be held in the "present circumstances" of 1923.

It will be demonstrated in the course of this Case and the evidence adduced in support thereof, that the policy of "Chilenization" has continued and is continuing with increasing vigor down to the present day under the Chilean belief that the Honorable Arbitrator will order a plebiscite to be held now, and that such plebiscite shall not, if Chile can prevent it, result in Peru's favor. Peru instead stands on its legal right that a plebiscite in 1894 resulting favorably to Chile, was a condition precedent to the inauguration of Chilean sovereignty in the territories of Tacna and Arica, and that Chile having prevented the conclusion of any protocol looking to the timely holding of the plebiscite, the necessary condition precedent to her sovereignty, has forfeited all the benefits which the successful outcome of that condition might have given her; and

that having prevented the performance of the only condition upon which Chilean sovereignty could vest or Peruvian sovereignty be divested, Peru's sovereignty in Tacna and Arica has continued, legally unencumbered by any Chilean right of occupation, since March 28, 1894.

The Peruvian Government hopes to demonstrate in the present Case that the Chilean policy has been one of aggression ever since 1842, when guano, and later nitrate, were discovered in the territories belonging to Bolivia and Peru; that Chile, rejecting all efforts at arbitration and mediation, insisted on undertaking the war of 1879 and prosecuted it relentlessly until her plan of conquest was achieved; that defying the public opinion of the world she has refused every rational method of reaching a basis for the execution of the Treaty of Peace until 1921, when the pressure of excessive military armaments on an overburdened budget and the weight of a practically unanimous public opinion in Europe and America, together with the confidence that "Chilenization" had progressed to a point assuring Chilean preponderance, induced her finally to accept the friendly invitation of the United States Government to a conference for the purpose of arriving at a solution of the controversy arising out of the stipulations of the Treaty of 1883. The outcome of that conference was this proceeding.

For the sake of clearness of presentation, it will probably be most convenient to consider the history of the controversy now in issue under the following eight headings:

1. Antecedents of the war of the Pacific.
2. Conduct of Chile during the War.
3. The peace negotiations.
4. The Tarata and Chilcaya questions.
5. The negotiations for the plebiscite.

6. The Chilean attitude in the Pan-American Congresses.

7. The interference of Chile in the international relations of Peru.

8. Chilenization and terrorism against the Peruvian residents of Tacna and Arica.

After this chronological consideration of the elements of the controversy and the relations between Chile and Peru and Bolivia from which it arose, it will be appropriate to draw certain conclusions from the facts adduced and the documents incorporated in the Appendix to this Case.

I

Antecedents of the War of the Pacific

The controversy now under arbitration may be said to have had its origin in the discovery of guano and later of nitrate in the Bolivian territory lying to the north of Chile. To appreciate the nature of the dispute it is desirable to examine with the aid of the map printed in the Appendix hereto, the geography of the territory in question, and to set forth the chronology of events leading up to the War of the Pacific.

Chile is a long, narrow country lying along the southwestern edge of South America. In length about 2,000 miles, it would cover approximately a coastal strip from Maine to North Carolina; in width, it extends from 100 to 200 miles only, from the Pacific Ocean to the Cordilleras of the Andes.

Down to 1842 there appears to have been no doubt as to the northern boundary of Chile. Chile's constitutions of 1822, 1823, 1828, 1832 and 1833, all appear expressly to recognize the northern boundary of Chile as the desert of Atacama, about 27° south latitude.

(Appendix, Exhibit 1.) Chapter I of the Constitution of 1833, as printed in Arosemena's *Estudios Constitucionales sobre los Gobiernos de la América Latina* (2nd ed. Paris, 1878) 1, p. 67, reads: "The territory of Chile extends from the desert of Atacama to Cape Horn, and from the Cordilleras of the Andes to the Pacific Ocean. . . ." The desert of Atacama extending from about 27° to 23° south latitude was up to 1842 under the undisputed dominion and sovereignty of Bolivia. North of 23° was Bolivian territory, including Antofagasta, extending to 21°; north of that the Peruvian province of Tarapacá, extending from about 21° to 19°; and immediately to the north of this line are the provinces of Tacna and Arica, extending from about 19° to 17° 30′, containing an area of about 28,000 square kilometers and a population of about 30,000. From 17° 30′ to 17° adjoining Tacna lies the Peruvian Province of Tarata, which represents since 1883 the northern limit of Chilean occupation. Between 1842 and 1883 Chile advanced her northern boundary from 27° to about 17° south latitude.

The immediate reason for the first step in this northward expansion appears to have been the discovery of guano in the desert of Atacama. President Montt, of Chile, in a message to the Chilean Congress, on July 31, 1842, conveyed the following information:

> "Inasmuch as the usefulness of the substance known as 'guano' has been recognized in Europe, although from time immemorial it has been used as a manure for fertilizing the land on the coast of Peru, I deemed it advisable to send a commission to explore and examine the seaboard from the Port of Coquimbo to the head of Mejillones, for the purpose of discovering if any guano deposits existed *in the territory of the republic*, which, properly worked, might furnish a new source of revenue to the Treasury; and notwithstanding that

> the result of the expedition has not come up to our expectations, guano has been discovered from 29° 35′ to 23° 6′ of South latitude." (See Maurtua, The Question of the Pacific, English translation by F. A. Pezet, pp. 16–17.) (*Italics ours.*)

Chile's northern boundary was then 27°, so that evidently much of the territory prospected was in the desert of Atacama, then Bolivian.

The Chilean Congress, pursuant to the Presidential Message, enacted on October 31, 1842, a law providing that "all the guano deposits which existed in the province of Coquimbo, *in the littoral of Atacama*, and in the adjacent islands, are hereby declared national property." (*Italics ours.*) Thus began the official northward expansion of Chile by the appropriation of the territory of her neighbors.

Bolivia protested against this assumption of Chilean sovereignty over Bolivian territory, and thus began the controversy which culminated in the war of the Pacific of 1879, brought Peru into the conflict and created the question now at issue.

Bolivia's protests went unheeded. Continuous incursions by Chilean guano hunters were followed in 1857 by the landing of a Chilean military expedition at Mejillones, one of the principal ports of the Atacama desert, and the ousting of the Bolivian authorities. To Bolivia's demands for evacuation of the territory thus occupied, Chile set up a claim of territorial right and expressed a willingness to draw up a boundary treaty, dividing the Atacama desert between them. Bolivia, weak and misgoverned by a succession of military dictators was constrained to yield. Protracted negotiations, interrupted by the war against Spain, finally resulted in the treaty of 1866 (Appendix, Exhibit 2) by which the new boundary line was fixed at 24°, Bolivia thus surrendering the territory from 27°

to 24°. Chile had claimed all the territory up to 23°. In the region between 23° and 25° a sort of condominium was set up, each country to receive half the proceeds of the guano and mineral deposits and dividing the export duties.

That Bolivia entertained a great fear of Chilean aggression, on the discovery of natural wealth in Bolivian territory, is evident from the despatch of Mr. Markbreit, American Minister at La Paz, to Hamilton Fish, Secretary of State, January 31, 1872 (Foreign Relations 1872, page 64, Appendix, Exhibit 5). That dispatch affirms that since the conclusion of the Treaty between Bolivia and Chile of 1866, under which a condominium was set up between the 23rd and 25th parallel, rich guano deposits and silver mines were discovered in Bolivian territory and that "it is now feared by the Bolivian Government that Chile may attempt to possess herself of these mines, as well as of the guano deposits at Mejillones, availing herself of the first opportunity, with that purpose, that may offer. It is claimed that Chile is greedily waiting for some excuse, however trivial, to take this course. . . . Whether the alarm felt by the Bolivian people relative to what they believe to be the attitude of that (Chilean) Republic is well founded, the near future will show."

The Bolivian people, it would seem, did not have long to wait to determine whether their fears were justified.

The condominium proving unsatisfactory in administration, a new treaty was concluded in 1874 which fixed 24° as the boundary between Chile and Bolivia. It also provided that guano deposits in the zone between 23° and 24° were to be equally divided between Bolivia and Chile. Article 4 of the Treaty (Appendix, Exhibit 3) which ultimately gave rise to the dispute which led to the war of 1879, reads:

"The export duties to be levied on the minerals mined within the zone mentioned in the preceding articles shall not exceed those which are in force at the present time; and Chilean capital, Chilean persons and their industries, shall not be subject to any other taxes of whatsoever kind than at present exist."

A supplemental agreement of 1875 provided that all disputes arising out of the interpretation of this Treaty were to be submitted to arbitration.

Chilean diplomacy had seized upon various pretexts to obtain possession of the Bolivian littoral. The devious methods by which this policy was executed and carried to success are set forth by Doctor Maurtua in his work "The Question of the Pacific," which is submitted herewith, for the use of the Honorable Arbitrator, in an English translation by F. A. Pezet. Bolivia, forced back from one position to another and misgoverned internally, could not make an appropriate defence to the successive assaults upon her sovereignty, and in order to avoid war made continuous concessions to Chilean aggression. This continuous yielding by Bolivia is confirmed by Doctor Marcial Martinez, well-known Chilean publicist and formerly Chilean Minister in Washington. (Maurtua. op. cit. page 24, citing the book of Martinez "Chile and Bolivia," published in 1873.)

But Chile's policy was also directed to placating Bolivia for her loss of territory, at the expense of Peru. As early as 1866, we find Chile offering to compensate Bolivia for the loss of Bolivian territory to Chile by a proposal to hand to Bolivia the Peruvian littoral included in the territories of Tarapacá and Tacna. At the very time when Peru and Chile, in 1866, were allies against Spain, the Chilean Minister at La Paz, Bolivia, proposed to the Bolivian Government certain compensation for the territory renounced up to 23° and as

compensation for a further renunciation up to the river Loa (about 21°), that Chile and Bolivia should "acquire by armed occupation the Peruvian littoral as far as the Morro de Sama as compensation for the cession of the Bolivian littoral to Chile." It is not easy to characterize this proposal for the appropriation of the territory of an ally, but that it correctly portrays Chilean policy as early as 1866 is evidenced by the testimony of Señor Mariano Donato Muñoz, who in 1866 was Minister of Foreign Affairs of the Bolivian Government, in a letter which he addressed, April 21, 1879, to the Bolivian Minister at Lima (Appendix, Exhibit 4).

Sir Clements R. Markham, the President of the Royal Geographical Society of London, in his History of Peru, referring to the Chilean-Bolivian boundary question says:

> "If this wealth [of Atacama and Tarapacá] had not been brought to light, the rights of Peru and Bolivia to their respective territories would never have been disputed. . . . After Fitz Roy's survey . . . .inquiries were made of the Chilean authorities as to the position of the boundary, and it was placed to the south of 25° S. . . . It was only when the great value of Atacama was discovered that any question was raised. Then Chile laid claim to the 23rd parallel. It has been shown that her boundary was south of 25° S. . . . Chile had no more right to 24° S. as a boundary than she had to 23° S." ("The War between Peru and Chile," pp. 81–84.)

The progressive Chilean encroachment on Bolivian territory was disquieting, not only to Bolivia, but also to Peru, her northern and western neighbor. Down to this time the relations between Chile and Peru and between Bolivia and Peru had, on the whole and with minor interruptions, been friendly. In fact, Bolivia

and Peru had joined in a Confederation in 1836—which Chile, indeed, aided to dissolve—and had given other evidences of solidarity. When, then, in 1872, the Bolivian Congress enacted a law instructing the Executive to "enter into a treaty of defensive alliance with the Government of Peru against all foreign aggression," Peru was not unwilling to enter into such a treaty. The treaty, as its wording plainly indicates, was designed to preserve the status quo, and has its counterpart in the Covenant of the League of Nations and the Washington Conventions concluded at the Conference on the Limitation of Armaments. The Treaty of 1873 (Appendix, Exhibit 7) reads, in part, as follows:

> *Article I.* The high contracting Parties unite and bind themselves mutually to guarantee their independence, their sovereignty and the integrity of their respective territories, engaging themselves within the terms of the present Treaty to defend each other against all foreign aggression, whether of one or of several independent States. . . .
>
> *Article II.* The alliance shall be made effective for the maintenance of the rights expressed in the preceding article and in the following cases of offense.
>
> First: Acts committed with intent to deprive either of the high contracting parties of a portion of its territory, for the purpose of obtaining dominion thereover or of ceding it to a third power.
>
> Second: Acts tending to oblige either of the high contracting parties to accept a protectorate, the sale or cession of any territory or to establish any kind of superiority over it, or right of pre-eminence which may lessen or impair the complete exercise of its sovereignty and independence. . . .
>
> *Article III.* Both the high contracting parties recognizing that all legitimate acts of alliance are based upon justice, the right is hereby established for either party to judge whether the offense

received by the other can be included among the ones mentioned in the foregoing article.

Article IV. Once the *casus foederis* having been declared, the high contracting parties agree immediately to break off all diplomatic relations with the offending State. . . .

Article VIII. The high contracting parties likewise agree to the following:

First: Preferentially to employ, always provided that it be possible to do so, every possible conciliatory measure to avoid a rupture (between the other contracting ally and a third power), or such as may tend to put an end to the war, if it has already broken out, the arbitration of a third power being deemed the most effective way of attaining this end.

Second: Not to concede or accept from any nation or government a protectorate or suzerainty limiting their independence or sovereignty, nor to grant or dispose of in favor of any nation or government, any portion of their territory whatsoever, except where a better demarcation of their boundaries should make it necessary. . . .

Article X. The high contracting parties, either separately or collectively, may invite the adhesion of one or of several other American States to the present defensive treaty of alliance. . . .

This Treaty was kept secret, as were many treaties of the time. Whatever the wisdom or unwisdom of such policy, for the co-operation of parliaments and hence of hundreds of legislators was hardly a guaranty of secrecy, it seems to have been entirely and exclusively defensive in character and it was not submitted to Chile for adhesion, because of a well-grounded belief that that country was not interested in maintaining the *status quo*, but on the contrary, was intent on disturbing it by further aggressions on her neighbors and that knowledge of the treaty would only result in increasing her armament and promoting war, the very thing it

was hoped to avoid. The Treaty was concluded at a time when Bolivia was being subjected to great pressure and threats from Chile, arising out of the alleged violation by Bolivia of the Treaty of 1866, a violation denied, however, by the Chilean diplomat Marcial Martinez. (Maurtua, *op. cit.*, p. 32.) In the Chilean-Bolivian controversies, Peru's sympathies had been with Bolivia, and Peru had in fact, on November 19, 1872, some months prior to the Treaty of Alliance, declared that it would lend its aid "to reject any demands which it should consider as unjust or menacing to Bolivian independence," but it had throughout been the cardinal principle of Peruvian foreign policy, to avoid any hostilities breaking out on the west coast. (See the confidential note of the Peruvian Minister of Foreign Affairs to Anibal V. de la Torre, Peruvian Minister at La Paz, August 21, 1873, Irigoyen, Documentos, Appendix, Exhibit 6, b.) It should be observed, moreover, that in 1871 the Chilean Congress had passed an Act authorizing the building of new war vessels. This fact, combined with Chile's aggressive policy in pushing northward along the coast, fully accounts, it would seem, for the Treaty of Alliance.

This Treaty of 1873 was one of the pretexts used by Chile for the declaration of war on Peru in 1879, at the time of the Peruvian efforts to mediate in the dispute between Bolivia and Chile, presently to be described. That its aim was strictly defensive and that its purpose was to promote recourse to arbitration for the settlement of boundary disputes is demonstrated, it is believed, by the documents incorporated in the Appendix (Exhibit 6). These documents constitute communications between the Peruvian Minister of Foreign Affairs and the Peruvian Minister resident in Buenos Aires, Señor Manuel Irigoyen, and between the latter and the Minister of Foreign Affairs of the Argentine

Republic, the adhesion of which Government to the Treaty was sought. From those communications it is apparent that the purpose of the Treaty was to prevent wars for territorial expansion. It is probably true that Chile, whose aggressive encroachment on Bolivian territory was no longer a theory or a fear but a demonstrated fact, was one of the countries whose unlawful territorial expansion it was designed to prevent. But that it had any offensive implications seems to be refuted by all the evidence obtainable. Its thoroughly defensive character is not only derivable from the language of the Treaty, but the correspondence concerning it between the interested parties clearly shows its purpose. The Peruvian Minister of Foreign Affairs in his personal letter to Señor Irigoyen, of August 24, 1873, says (Appendix, Exhibit 6,c):

> "The Government has not now, nor has it ever had, the intention of entering into an offensive alliance. We do not wish, nor is it to our interest, to attack any nation; on the contrary, it is to the interests of us all in America to avoid wars and the Treaty we perfected in February has no other purpose than to make war impossible; since the excessive ambitions of any of the American Republics would be halted when confronted by a combination possessing sufficient authority to discourage it from attempting to carry out its plans by force, and likewise because by virtue of the alliance, it would be compelled to submit the issues to arbitration."

So, Señor Irigoyen, in his communication with the Argentine Minister of Foreign Affairs, says that the Treaty is entirely free

> "from all hostile or aggressive intent against any nation in particular, and from all ambitious designs against the rights of others. On the contrary, all

its stipulations tend to the protection, pure and simple, of autonomy and territorial integrity against all foreign aggression, and likewise to prevent a rupture by the removal of all pretexts for war; for, in the first paragraph of the eighth article, arbitration is established as the only just and rational means to be employed for the settling of boundary questions." (Appendix, Exhibit 6, d.)

So, in like spirit, Señor Mariano Baptista, Bolivian Minister of Foreign Affairs, in his note to Señor de la Torre, Peruvian Minister at La Paz, says, June 17, 1873:

"The Treaty of alliance opens a new era of public law in South America. The hopes, heretofore ephemeral, of general confederation, have as their point of departure a spontaneous and effective basis, which will give us all the advantage of the projected confederation while suppressing the embarrassing formulae and *a priori* theories which have not been possible of satisfactory execution. . . Another of the advantages (of the Treaty) rests in the perfect sincerity of its stipulations which have been reduced to the most evident expression of right and justice, the strict and sacred defense of national territory which constitutes the very essence of sovereignty. No aggressive object, no ambitious intention designed to injure the rights of any other country can be derived from the text of its diverse articles; on the contrary, indeed, all of them tend purely and simply to guarantee national autonomy. (Irigoyen, P., La adhesión de la República Argentina al tratado de alianza defensiva, p. xiv.)

Moreover, the treaty was not directed against any particular power, nor was it designed to be a treaty for the settlement of boundary disputes merely between Argentina, Bolivia and Chile. Such a limited construction of the treaty, whose purpose was to guarantee territorial integrity, was repudiated by the Peruvian

Minister of Foreign Affairs, de la Torre, in his note to Señor Irigoyen, April 22, 1875. (Appendix, Exhibit 6, g.)

It is often difficult to explain why certain treaties are kept secret. In this case the failure to acquaint Chile with the treaty was due to the fact that confidence in Chile's pacific intentions and reasonableness had disappeared, and the belief was entertained that acquainting Chile with the treaty would merely hasten the Chilean efforts to acquire a navy and continue her aggressive expansion northward on the western coast of South America. (See Appendix, Exhibit 6, c). That the lack of confidence was justified, the facts of Chile's aggression against Bolivia probably demonstrate. On the question of the wisdom of keeping the treaty secret, opinions may differ, but that it was devoid of any implication of attack upon Chile or aggressive intent and that its sole purpose was to defend the contracting and adhering nations against the aggressions of other powers, including doubtless Chile, and that it was designed to promote recourse to arbitration in the event of disputes over boundaries, is hardly open to doubt.

Chile at this time was engaged in a boundary dispute with Argentina, respecting Patagonia, a fact which had some influence on Bolivian policy, to be noted presently. The Argentine Chamber of Deputies voted adhesion to the treaty, but the Senate declined. The existence and secrecy of this treaty were among the grounds advanced by Chile in 1879, as a justification of her declaration of war against Peru; but the evidence seems to indicate, as Chilean historians like Bulnes and Santa Maria have indeed admitted, that the treaty was fully known in Santiago (Appendix, Exhibits 8 and 9); and the Chilean Minister of Foreign Affairs in his circular note of December, 1918, to Chilean Diplomatic Representatives in foreign capitals (San-

tiago, 1918, p. 35) confines himself to denying Chile's "*exact*" knowledge of the treaty. Anselmo Blanlot Holley, one of the most ardent among the advocates of Chile, states in a pamphlet recently published "that the treaty of February 6, 1873, was known to the Government of Chile, and although on that account the construction of the cruisers '*Blanco*' and '*Cochrane*' was hastened, it was not believed that the treaty would produce a war." *Conferencia Internacional* (Santiago, 1919, p. 14). Moreover, the evidence adduced by the Bolivian historian and diplomat Alberto Gutierrez, in his work "*La Guerra de* 1879" (Paris, 1914, p. 32) leaves it beyond question that from November 1, 1873, the treaty was fully known in Santiago.

In connection with the defensive treaty of 1873 and the Chilean assertion of 1879 that the treaty was unknown in Santiago, it is well to call attention to the fact that in 1875 Chile unsuccessfully proposed a secret treaty with Brazil, and that in connection with that undertaking Chile proposed to pursue her time-honored policy of ousting Bolivia from the Bolivian littoral on the west coast, compensating her by handing over the Peruvian province of Moquegua, and that it was also her policy to obtain possession of the valuable Peruvian nitrate province of Tarapacá.

In evidence of this Chilean disposition and policy, it is proper to quote a dispatch addressed by Sir Spencer St. John, the British Minister at Lima, to the Earl of Derby, British Secretary of State for Foreign Affairs, August 26, 1875:

> "I have been informed that there is a very complicated negotiation being carried on between Brazil and Chile,
>
> * * * * * * *

"to prevent Bolivia offering obstacles, it is proposed that it shall be compensated *at the expense of Peru*, and that it should receive the province of Moquegua, and thus obtain its coveted communication with the sea. *It has not been settled which Republic is to obtain possession of the valuable province of Tarapacá, but Chile is well known to covet it.* (Italics ours.)

That this arrangement was in contemplation as early as October, 1873, is evidenced by a report of Sir Horace Rumbold, British Minister at Santiago, to the British Secretary of State for Foreign Affairs, Earl Granville, on October 15, 1873:

"At the same time, the Government of Chile, being on doubtful terms with the Government of Buenos Aires, have an evident interest in seeking the good-will of the Brazilian Empire."

Don Manuel Irigoyen, Peruvian Minister in Buenos Aires, addressed the Argentine Minister of Foreign Affairs Sept. 20, 1875, as follows:

"They (Chile) have already tried this (a Brazilian alliance) once, though unsuccessfully, so it would therefore not be surprising that they should persist in their endeavor, especially because they will have considered the moment to be opportune, in view of the condition of the relations of Brazil with this Republic (Argentine). I therefore believe the efforts of Blest Gana (Chilean Minister in Buenos Aires) to be certain; however this is not the point, but whether, the Brazilian Government having no interests to further in the Pacific, would decide to accept his proposals, and being, as it is, conversant with our negotiations with this Republic (Argentine) and with their principal objective." (Irigoyen, P., "La adhesión de la República Argentina al Tratado de Alianza Defensiva," p. 132.)

Nitrate had in the sixties been discovered in considerable quantities in Bolivia and in the Peruvian

province of Tarapacá. Among other foreign concessionaires, Chilean citizens owned several "oficinas" and some Chileans were employed in the works. The Peruvian Government in 1873, undertook to create a national monopoly of the nitrate industry in Peruvian territory, partly by exercising the power of eminent domain and partly by fixing prices. Chile appears to have regarded the policy as directed solely to the injury of Chileans, although Chilean interests were very considerably less in Tarapacá than those of Peruvians and other nationalities. Barros Arana, the Chilean historian, in his "*Historia de la Guerra del Pacífico*," Volume 1, p. 36, states that he "does not completely share the opinion" frequently expressed in Chile that the Peruvian measures were designed to ruin Chilean interests. Mr. J. Perkins Shanks, an informed student of the subject, in the course of an article in the May, 1923, *Forum* (v. 69, p. 1516), says:

> "Public opinion (in Chile) had been waiting for a good many years to strike a telling blow at Peru in order to deprive her of the guano, and the press of the country now clamored for a government attack on Chile's enemy, declaring that the nitrate bill was a direct blow at Chile, although this last was denied many, many times by Chile's greatest statesman, who declared that Peru had a perfect legal right to adopt any measure which was for the best interests of Peru."

At all events, it is certain that no diplomatic claims or protests appear to have been entered against Peru. The matter was, in fact, referred by the British Government to the Law Officers of the Crown, and their opinion was communicated to the British Minister at Lima, the Hon. W. S. G. Jerningham, by the British Secretary of State for Foreign Affairs, Earl Granville, December 27, 1873, as follows:

"I have now to inform you that it appears to His Majesty's Government that the Peruvian Government have the right to regulate the manufacture and export of produce within and from Peruvian territory and that manufacturers settling for the purpose of trade or manufacture in Peru must be subject to the laws of that Republic, whether they be natives or foreigners."

Inasmuch as British capital and subjects were interested in the nitrate industry, this opinion of the British Secretary of State for Foreign Affairs as to the legitimacy and propriety of the Peruvian legislative measure is very significant. It deprives of all validity the Chilean claim that her citizens were either the objects of the policy or wrongfully affected by it. The Chilean claim is, in fact, to be regarded merely as another of the several pretexts advanced by the Chilean Government in the carrying out of its definite policy of obtaining possession in some way of the province of Tarapacá.

The Peruvian policy with respect to nitrate in Peruvian territory, entirely legal as it was, would not be important but for the fact that Chile made it an alleged ground of grievance against Peru, admitting only after the war, in 1881, that the control of the Peruvian nitrate was "the real and direct cause of the war," a proposition which will presently be more fully considered.

That Chile's complaint was a mere pretext, without any legal or moral justification in fact, is attested by Sir Clements R. Markham, in his work on "The War between Peru and Chile." Referring to the fact that Balmaceda, Chilean Minister of Foreign Affairs had, in 1881, confined the expression of Chilean grievances against Peru to the Peruvian nitrate policy in Peruvian territory, Sir Clements says (p. 90):

"Stripped of rhetoric and suggestions of motives, the manifesto of the Chilean Minister of Foreign

Affairs in defence of the war, published after the war was virtually over (December 21, 1881), contains this grievance against Peru, and nothing more. Peru, he complains, had established a nitrate monopoly in her own dominions, which would injure the prospects of Chilean capitalists and labourers. Now it could not be pretended that Peru had not the right to make any such arrangement within her own territory; and yet the verbose and rhetorical manifesto gives no other explanation and raises no other point. It is clear, therefore, that the policy adopted by Peru as regards her own internal affairs was the only real cause of offense, and that it was not a just pretext for war. The conclusion is inevitable that Chile made war on her neighbour without just cause. At last this has been confessed. 'The *salitre* territory of Tarapacá,' admits the Chilean Minister, 'was the real and direct cause of the war.' Consequently, we may fairly add, the war was unjust."

A valuable explanation of Peruvian economic policy and a statistical study of the nitrate industry in Tarapacá prior to the war of 1879, is to be found in a pamphlet by Ricardo Madueño, *La Industria Salitrera del Perú*, Lima, 1919, 15 pages.

To return to the Chilean and Bolivian situation: Two Chilean citizens had obtained from Melgarejo, a Bolivian dictator of doubtful character, a nitrate and railroad concession in the Bolivian zone between 23° and 24°. Melgarejo appears to have been largely under the control of the Chilean Government. When Melgarejo, an ephemeral military chieftain, was ousted from office by the popular indignation of the Bolivian people, of whose resources he was disposing with a lavish hand, the new Bolivian Government sought to annul all the concessions that had been granted by him, but the nitrate and railroad concessions given to the two Chilean citizens above mentioned, which had in the

meantime been assigned to the *Compañía de Salitres y Ferrocarril de Antofagasta* (the Antofagasta Nitrate and Railroad Company) was confirmed by an executive agreement in 1873. The Chilean Government had insisted upon the maintenance of this immense concession, and had in addition insisted upon a suspension with respect to the Company of the law on export duties, which the Bolivian Government had enacted. Sir Horace Rumbold, British Minister at Santiago, writing to the Earl of Derby, the British Secretary of State for Foreign Affairs, in a despatch of March 12, 1874, speaks of the Bolivian reply to the Chilean representations, as follows:

> "Their answer, which appears moderate in tone, is to the effect that in proof of their cordial sentiments toward a sister nation, they have suspended the new law on export duties on metals and will, for the present, maintain the *status quo*."

The Treaty of 1874 with Chile, it will be recalled, had provided against any future taxes on Chilean capital, industry or citizens, higher than those then in force. This Treaty, which Chile had in fact forced upon Bolivia, and which was deemed a compromise from the exorbitant and thoroughly unjustified Chilean claims under the Treaty of 1866, was so advantageous to Chile that the British Minister at Santiago doubted its ratification by the Bolivian Congress. He wrote, addressing the British Secretary of State for Foreign Affairs, September 15, 1874:

> "It remains to be seen whether a convention so clearly advantageous to Chile, will receive the sanction of the Bolivian Congress."

It was not until 1878 that the Bolivian Congress confirmed the concession-contract of the Antofagasta Nitrate Company under the executive agreement of

1873, and they did so under the condition that the Company should pay 10c (*centavos*) per quintal of nitrate exported, instead of 10% of the profits of the business, which, under the old contract, the Government was to receive. Until this time the concession-contract had not been ratified by the Bolivian Congress. Against the proposed tax of 10c per quintal, which, as will presently appear, was extremely moderate in amount, Chile protested as in violation of the Treaty of 1874. Bolivia answered that this was not a general tax, but that the matter concerned merely a private concession-contract between the Company and the Bolivian Government. With respect to the reasonableness of this condition, Sir Spencer St. John, British Minister at Lima, wrote to the Marquis of Salisbury, then Secretary of State for Foreign Affairs, under date of February 19, 1879, as follows:

> "It is no doubt natural that so very poor a Government as that of Bolivia should think it unjust that a company should export a million quintals of nitrate of soda every year and make an enormous profit on account of the monopoly of that article in Peru, and yet contribute nothing whatever to the support of the constituted authority. It would only have been prudent on the part of the company to have come to an understanding with the Bolivian Government, as the charge of 10c per quintal still leaves them very advantageously placed in comparison to their rivals in Peru who pay a duty twelve times and a half of that amount."

The late Dr. E. S. Zeballos, the Argentine publicist and several times Minister of Foreign Affairs of that country, in referring to this tax, adds:

> "and when the Chilean conquest of the Bolivian littoral was consummated the Chilean Government raised the tax to one dollar."

The Chilean Government brooked no delay in the negotiations and threatened to break off relations unless the 10c per quintal tax was repealed. Instead of confining the controversy to the legitimacy or illegitimacy of the tax on the company, Chile made the controversy an excuse for again bringing forth her old and unsustainable claims to a northern boundary at 23° which she had once before asserted prior to the Treaty of 1866. This assertion of a territorial claim, introduced into a controversy over a tax on a private company, became the root of the War of 1879 with all its consequences, and confirms the opinion expressed by neutral and even Chilean writers and foreign Governments that Chile sought an excuse and justification for the wilful appropriation of the territory of other countries in order to secure for herself the natural resources of those countries. This fact, which is believed to be demonstrable beyond the peradventure of a doubt (see *infra*, p. 53), must exercise a great influence upon the equities of the case, for it is not possible to dissociate the results of a policy from the motives of that policy.

The Antofagasta Nitrate Company having refused to pay the 10c per quintal export tax, Bolivia first attached the property of the Company, but owing to difficulties in its administration the Bolivian Government decided by decree to cancel the concession-contract of the Company for a violation of its terms. Chile asked for the suspension of all these measures and gave an ultimatum of forty-eight hours for the Bolivian answer. Bolivia delayed her answer until the expiration of the period allowed, at which time the Chilean Chargé d'Affaires had requested his passports.

Before the issuance of the Bolivian decree cancelling the concession-contract of the Antofagasta Nitrate

Company, there appeared in the harbor of Antofagasta the Chilean cruiser *'Blanco Encalada'*. This aggressive step appeared to confuse the Bolivian Foreign Office and Bolivian diplomacy. Hardly had the decree of rescission been announced in Chile and before notice of the delivery of the ultimatum by the Chilean Chargé, than the occupation of the Bolivian littoral was ordered and immediately accomplished without firing a shot. To give the seizure a professed legal basis, it was rested on the civil law right of "revindication," a reclaiming of that which one had once owned or possessed. The reason thus asserted has not commanded general favor, even in Chile, where the action itself appears to have been approved. See Vicuña Mackenna, a leading historian of Chile, in his *Historia de la Campaña de Tarapacá* (Santiago, 1880) page 277, where he quotes the following statement of José Eugenio Vergara, Senator for Aconcagua:

> "How," said he, "has our Chancery termed this *preventative occupation?* In an unhappy moment, and most improperly, it decided to describe it by the term 'revindication.'"

The Chilean legal claim to this territory, that is, up to 23°, reasserted on the alleged justification of a wrongful export tax levied on a private company, has been placed by some of the most extreme of the advocates of Chile on two grounds: first, that it was Chilean under the principle of *uti possidetis*, applied by the independent States of South America on their separation from Spain; and, second, that it was "Chilean soil because of its conquest for civilization, thanks to the enterprise, capital and labor of Chilean nationals." (See Blanlot Holley, *Conferencia Internacional*, page 18; and Rafael Egaña, *The Tacna-Arica Question*, Santiago, 1900, page 12.) The first of these grounds is apparently unsupported by the Chilean Constitutions after 1810,

the date from which the principle of *uti possidetis* became applicable, for, as has already been observed, those constitutions fix the northern boundary of Chile at the Desert of Atacama, about 27° south latitude, a boundary not questioned by Chile until 1842, when guano was discovered in the desert. The second ground, and one used frequently to sustain the Chilean territorial claims, appears to have no valid legal basis whatever. Even if it were true that the development of the Bolivian littoral was due entirely to Chilean capital and labor—an allegation which is not supported by any evidence—such contribution is not recognized in law as a title to territorial sovereignty. (See the circular Note of the Chilean Minister of Foreign Affairs of December, 1918, page 36.) Whatever the weakness of the Bolivian position, it hardly seems to have justified the aggressive belligerent action of Chile before the breach of diplomatic relations, while the question was still pending, and without a declaration of war. Thus Vicuña Mackenna, in his work on the campaign of Tarapacá, says, at page 264, quoting the words of one of the Representatives for Santiago during the solemn session of the Senate which discussed the making of war upon Bolivia:

> "Now, should I ask myself, has the motive for this war been in conformity with the sound and austere precepts of international law? I must answer, No. Because we might just as well have effected all that we did on the coast with a little more serenity, preparing, meanwhile, in favor of the incontrovertible justice of our cause, the hyper-sensitive minds and opinions of our neighbors."

Bolivia never regained the territory from which she was thus wrongfully ejected.

Until Chile forced the issue by her aggressive and manifestly arbitrary act of asserting a claim to terri-

tory in connection with a controversy between the Bolivian Government and the Nitrate Company arising out of a disputed export tax, a certain amount of sympathy for the justice of the Chilean claim in the matter of the tax had been expressed in Peru. Peru did not approve of the Bolivian decree cancelling the concession-contract, and instructed her Minister in La Paz on February 4, 1879, to use his good offices to compose the differences and propose their submission to arbitration. (Appendix, Exhibit 19). The instruction read, in part:

> "In a dispatch dated the 2nd of January, last, I recommended the advisability of giving your earnest attention to the matter which has recently arisen between that Republic and Chile, relative to the tax of ten 'centavos' which the Congress of Bolivia has assessed against the exportation of each hundred-weight of nitrate through the port of Antofagasta; and I authorized you, in addition, to tender the good offices of Peru in case the breaking off of harmonious relations between the above-mentioned countries should be threatened, endeavoring, meanwhile, in a friendly manner, to secure the discontinuance of any act or measure of that Government which might prevent or at least obstruct, a satisfactory arrangement."

The efforts of Peru to mediate in the dispute and avoid an open break continued until some time after hostilities between Chile and Bolivia had begun in February, 1879, and on March 5, 1879, Bolivia signed a protocol with Peru among whose bases was the suspension of the effects of the obnoxious tax law.

Peru likewise directed her efforts at mediation to Chile. She sent to Santiago a mission headed by José Antonio de Lavalle, who proposed, as a means of settlement, the re-establishment of the *status quo ante* by the Chilean evacuation of the occupied littoral and the submission to arbitration of the questions of the

Bolivian tax law and the validity of the cancellation of the concession-contract. Chile refused these terms or the submission of counter-proposals, stating that the question no longer involved a tax but Chile's title to the soil of the territory, thus giving tangible evidence of the fact that territorial expansion was and had been the object of Chilean policy. Lavalle proposed the submission of the question of title to the territory to arbitration and the temporary neutralization thereof. Chile refused. The instructions given to Señor Lavalle and the serious efforts of Peru to avoid a conflict and to arbitrate the dispute, are evidenced by the instructions given to the Peruvian Ministers at La Paz and Santiago (Appendix, Exhibits 19, 20 and 21.)

The Chilean Minister of Foreign Affairs, after peremptorily refusing to entertain the Peruvian suggestions for a peaceful adjustment, then assumed the initiative by denying Peru's disinterestedness, charging Peru with seeking to injure Chilean interests by her nitrate measures, a charge which the acceptance of the measures by foreign countries as legitimate completely refutes, and with keeping secret the treaty of alliance between Peru and Bolivia of 1873. Lavalle was accused by Chile of insincerity in his attempted mediation because of this Peruvian agreement with Bolivia. This accusation is hardly sustainable, for Peru, very weak militarily, had every interest in preventing a war between Chile and Bolivia, even apart from the stipulations of Article VIII of the Treaty, which bound her to seek to conciliate the belligerents. The sincerity of Sir Edward Grey's attempt to mediate between Germany and Austria on the one hand and Russia and Servia on the other, in 1914, is not impugned by reason of any secret Anglo-French or Anglo-Russian agreements.

The best proof that Peru's policy throughout was directed toward preventing war, especially with Chile,

is indicated by the fact that when, in September, 1875, the Argentine Republic, anticipating serious difficulties with Chile over the Patagonian question, sought to adhere to the Treaty of Alliance of 1873, Peru, impressed with the concrete possibilities of becoming an ally of Argentina under such circumstances, instructed its minister in Buenos Aires to avoid and evade the Argentine effort to adhere to the Treaty. (Appendix, Exhibit 22.)

The Lavalle mission has also been charged by Chileans with constituting a mere cloak to gain time for the war preparations Peru was then alleged to be undertaking. (See Egaña, *op. cit.*, p. 33.) This charge is devoid of all truth and cannot be substantiated, for it contradicts all the evidence. While Peru doubtless realized the delicacy of the situation, she was in such financial distress that she could make no real preparations. She had not a single good naval vessel, and her army consisted of 5,000 poorly equipped men. The total unpreparedness of Peru and her inability to take any effective measures between February 12th and April 5, 1879, which Chile has charged her with undertaking, are attested by Lieutenant Mason of the United States Navy in a report to the Navy Department. (See *Reforma Social*, Vol. XIII, March, 1919, p. 177 et seq.)

The disparity between the military equipment of Chile and Peru, which practically alone bore the brunt of the fighting, is evidenced by the testimony of the historians quoted in the Appendix, Exhibits 15 to 18. The preparedness of Chile reflects accurately the policy of conquest on which she had determined to embark, and its development is correctly expressed by the British historian, Sir Clements R. Markham, in his work "The War between Peru and Chile," where he says (p. 93):

"Chile had been quietly but busily increasing

and strengthening her navy for the last six years; and when she declared war upon her neighbours it was very formidable."

The Chilean Minister of Foreign Affairs brought the negotiations with Lavalle to a close by asking first, a declaration of neutrality by Peru as a condition for the resumption of the *pourparlers*; second, the abrogation of the Bolivian-Peruvian Treaty of 1873; and, third, the cessation by Peru of all armed preparations. Peru finding it impossible to accept such humiliating conditions, a fact doubtless realized by the Chilean Minister of Foreign Affairs, Lavalle was dismissed and Chile, on April 5, 1879, declared war on Peru, as she had already declared war on Bolivia.

It has already been shown that the Treaty of 1873, which had been openly discussed in diplomatic circles in La Paz, Lima, Buenos Aires, Santiago and Rio Janeiro, was not unknown to the Chilean Foreign Office. All these facts lead to the conclusion expressed by Sir Clements R. Markham, the English historian, that Chile sought a pretext for the war against Peru, the object being the nitrate wealth of Antofagasta and Tarapacá. Sir Clements, in expressing his approval of the reasonableness of the Lavalle proposal and his disapproval of its rejection by Chile, makes the following significant comment (*op. cit.*, p. 91):

"If Chile had desired peace, this Peruvian proposal was a fair basis for negotiation. But Chile had no such desire. On the contrary, she intended to extend the war by fixing a quarrel on Peru. The defensive treaty only obliged Peru to make common cause with Bolivia, in the event of arbitration and all other means of obtaining a peaceful solution having failed. Chile took care that they should not be tried. The proposals of Señor Lavalle were declined. Demands that could not honourably be complied with were made. All de-

fensive preparations on the part of Peru must cease; the Treaty of 1873 must be abrogated; neutrality must be declared at once. All things being ready, the Chilean Government dismissed Señor Lavalle and declared war upon Peru on the 5th of April, 1879.

"The official notes and declarations on both sides are very diffuse; but facts speak for themselves. The pretexts for making war were unjust and baseless. The intentions of Chile were conquest and annexation; those of Peru and Bolivia were the defense of their own territory."

Other neutral and even Chilean publicists and statesmen have entertained no doubt that the Chilean policy was directed solely toward conquest and annexation of territory containing unlimited natural resources. Of these we may briefly cite only a few:

The Chilean statesman Francisco Valdez Vergara in his volume entitled "The Economic and Financial Situation of Chile" says:

"We have established the right of conquest in Spanish America to our own detriment. . . ." (Appendix, Exhibit 14.)

Dr. Zeballos, in the work above cited, states:

"The war against Bolivia was brought about on the pretext that the Government of that nation had decreed a tax of ten cents on the nitrate exported by an English Company working under a Chilean character."

Vicuña Mackenna, the well-known Chilean historian of that period, in his work "*Historia de la Campaña de Tarapacá*," from which quotations are printed in the Appendix (Exhibit 12), says:

"The war with Bolivia was therefore merely a question of time, from the moment when the prospector Cangalla came upon the first pieces of silver-bearing rock on the slopes of Caracoles; as was

bound to be equally inevitable and for identical reasons, a war with Peru, from the time the creeping rails and the exploitation of the nitrate beds attracted to the territory of that Republic. . . . an active, vigorous and intelligent race. . . . ."

Balmaceda, Chilean Minister of Foreign Affairs, in 1881, very frankly stated in an official circular Note (Appendix, Exhibit 13):

"The nitrate-bearing territories of Antofagasta and Tarapacá were the real and direct causes of the war."

So, General Hurlbut, United States Minister at Lima, in a dispatch to Secretary of State Blaine, October 4, 1881, states:

"In looking back upon the whole history of events, prior to hostilities and since, I can have no doubt but that the purpose, end and aim of this war, declared by Chile against Peru and Bolivia, was in the beginning and is now the forcible acquisition of the nitrate and guano territory, both of Bolivia and Peru." (Papers relating to the War of the Pacific, Sen. Ex. Doc. 79, 47th Cong., 1st sess., p. 528.)

Mr. J. Perkins Shanks, in his informative article in the May, 1923, *Forum*, referring to the fact that Chile had acquired knowledge of the Treaty of 1873, says (p. 1517):

"Chile determined to preserve a discreet silence, using the knowledge of the treaty's existence as a pretext for declaring a war of conquest for which she had been quietly preparing many years. Chile at once began to acquire arms and ammunition, and hastened the equipment of her navy and army, even to the extent of contracting with foreign gunners and engineers, many of these latter being personally known to the author of this article."

Chile's naval preparations in Europe were in fact reported to Peru by the Peruvian financial agent in

London as early as August 31, 1872 (Appendix, Exhibit 10) and in 1873 the Peruvian Minister in Bolivia reported that Chile was temporizing with Bolivia in order to get time to complete the cruisers then building in Europe, with a view to an ultimate attack on Bolivia. (Appendix, Exhibit 11.) Peru failed to attach to these belligerent preparations their full significance.

Sir Spencer St. John, British Minister at Lima, in his despatch to the Marquis of Salisbury, April 29, 1879, shortly after the outbreak of the war, makes this comment:

> "It appears to me that from the beginning of these complications it was not possible for any mediation to be successful. When Chile first seized Antofagasta and Caracoles, many considered that she was acting energetically in defense of the rights and interests of her citizens, which were being outraged by Bolivia, and had she declared that she only held these places as guarantees for the due performance of treaty obligations, it is probable that no one would have come forward to interfere by force of arms. But when she announced that she was revindicating her ancient right to these places, then she excited Peru to prepare for war."

As a matter of fact, in the debilitated state of Peruvian finances at the time, preparation for war was a mere ineffective form. Such motions in this direction as were made did not take place practically until the dismissal of the Lavalle mission in Santiago, when it definitely appeared that Chile was bent upon war and would not listen to mediation. Mr. Drummond Hay, the British Consul General at Santiago, telegraphing to the Marquis of Salisbury under date of July 15, 1879, thus describes the attitude of the Chilean people:

> "The Chile Government even if they desire mediation dare not mention such a measure at the

present moment, the population of this Republic being in a fever of impatient excitement for the war.

"The intention that Peru shall be made to pay dearly for the cost of the war, as well as the innate hopes that this country will be enriched by the results of the war, is so firmly rooted in the Chilean mind that without Peru be totally crushed, she could not accept the terms to which Chile would at present subject her."

War having thus been thrust upon Peru for causes and objectives which hardly bear the light of examination, the Peruvian Government undertook in a Circular Note to publish the facts to the world. (Appendix, Exhibit 23.)

While there is no question that Peru entertained a feeling of suspicion against Chile, aroused by the continuous encroachment on Bolivian territory and her gradual expansion northwards, a fact which doubtless explains the treaty of 1873; and while it is doubtless true that the "nitrate policy of Peru" was designed to create a national monopoly of nitrate, thereby establishing a fixed price for nitrate and disappointing speculators—the policy was directed against all private owners and Great Britain officially admitted the validity of the measures—still, with all possible allowances for the sincerity of the Chilean contentions, it is manifestly impossible to accept the Chilean assertion (Circular of the Chilean Minister of Foreign Affairs, December, 1918, page 29) that "Peru provoked war at a time when it considered Chile compromised and engaged in serious difficulties with Argentina"—shortly thereafter submitted to arbitral settlement—and that Chile was "dragged into the war" by virtue of "the offensive and defensive alliance between Bolivia and Peru." On the contrary, all the evidence indicates that neither the parties themselves, nor those whose

adherence was sought, considered it anything but a defensive alliance for the maintenance of the *status quo*. Moreover, it is impossible to doubt the sincerity of Peru's effort to avoid, and if that proved unsuccessful, to terminate the war between Chile and Bolivia. In the matter of motive it is reasonable to conclude that Peru had nothing to gain from a war against Chile. They were not adjoining countries, had no boundary dispute and whatever guano and nitrate Chile had obtained through the treaty of 1874 with Bolivia, Peru had so much more that it is not reasonable to suppose that she coveted Chile's. Indeed, so far as can be discovered, only Orrego Luco, one of the most zealous of the Chilean protagonists, has imputed such a motive to her. On the other hand, the same absence of motive cannot be ascribed to Chile, whose policy had, since 1842, been directed toward acquiring an ever greater control of the territory to the north of her, first when guano was discovered, and then, pressing further northward, as nitrate was discovered. Mr. J. Perkins Shanks, in his article in the May, 1923, *Forum* (p. 1515), correctly describes the operative facts when he says:

> "Previous to the '60s, Chile was relatively poor, whereas Peru was wealthy, which engendered further envy and led to Chile's considering any method which might result in depriving Peru of at least part of its riches."

The cumulation of evidence is too great to admit of any doubt that the real and effective motive of the war, avowed in fact by the Chilean Minister Balmaceda in 1881, was the acquisition by Chile of the guano and nitrate wealth of Bolivia and Peru.

II

Period of the War

In the light of the purpose of Chile in declaring war upon Bolivia and Peru, it is not surprising to find that the method of conducting it was as repulsive as the aims which motivated it. It is a fortunate fact that the interest of the United States in the struggle, and in its outcome, was of such a nature that the record of its development and the aims with which it was fought are more fully reflected in the public documents of the United States than in those of any other country, for the United States not only made worthy efforts to bring the conflict to a close by insistent offers of mediation, but kept in constant touch through its official representatives with the three capitals involved. The reports of the diplomatic representatives of the United States at Lima, La Paz and Santiago, constitute a record which is self-explanatory of the conduct of the struggle and of the spoliating aims of the Chilean Government. It has the additional weight of coming from impartial observers. The Peruvian Government relies for its strongest support upon the practical unanimity of the reports to the Department of State made by the United States diplomatic representatives in the three capitals mentioned. The Foreign Relations of the United States for the years 1879 to 1883, and notably a special volume known as Senate Executive Document 79, 47th Congress, 1st Session, entitled "Papers Relating to the War in South America," published in 1882, constitute a complete record of the conduct of the war and of the tortuous negotiations designed to bring it to a close, negotiations in which the United States hopefully assumed the part of a mediator in reliance upon the frequently expressed Chilean assertion that the war was not one of conquest.

The Chilean attempt to reconcile the very definite

acts and effects of conquest in its most undisguised form with a disavowal of any purpose of conquest, led the United States into a belief that it could terminate the war with self-respect to both nations and reconcile amicably their conflicting interests. Unwittingly, action on that hope and belief led to a prolongation of the war from 1881 to 1883, with untold suffering to the Peruvian people. The result, nevertheless, is not without importance on the equities of the case and on the correct interpretation of Article III of the Treaty of Peace, which brought the war to a close.

That the war was conducted by the Chilean Government with a cruelty and brutal disregard of human rights, not readily to be duplicated in the annals of modern warfare, is evidenced by the dispatches of the United States Minister at Lima, Mr. Christiancy, to the Secretary of State at various times in 1881. These are to be found in Senate Executive Document 79, "Papers Relating to the War of the Pacific," cited above; from them partial reprints have been made and are included in the Appendix to this Case (Exhibits 24 to 27). They disclose the fact that "in taking Arica" the Chileans "took no wounded Peruvian soldiers there, and from all I could learn from all sources, the same was substantially the fact at the battle of Tacna, with very slight exceptions" (Appendix, Exhibit 24); that the Chilean Army lived off the country and confiscated not only public property but private property in unlimited amounts (Appendix, Exhibit 25); that contrary to all rules of civilized warfare, the Chilean Army took to Santiago the entire contents of the National Library of Peru, at Lima, and took from the exposition grounds and buildings belonging to the Benevolent Society of Lima, "all the plants and pictures in the buildings on those grounds, all the collec-

tions of animals (a menagerie of them) and everything of value that could be taken; the laboratory and the appurtenances of the School of Medicine, amounting to over one half million of dollars, and everything that could be removed from the School of Arts at Lima, consisting of models, machinery, etc., for teaching in the arts and sciences and in the various trades." (Appendix, Exhibit 27.)

Sir Clements R. Markham in "The War between Peru and Chile" says, speaking of the taking of Arica:

> "As on other occasions the proportion of killed to wounded was monstrous—700 to about 100. After the capture of Arica the usual drunken revelries took place, and the town was fired in several quarters (p. 207). . . . .
>
> "The Chileans as usual gave no quarter [at Chorrillos] and bayoneted not only all the wounded but defenceless civilians. Here the aged Dr. Maclean, a respected English physician, long resident in Lima, was foully murdered. The Chilean rioters soon set the houses on fire, and the town was burnt amidst the most hideous scenes of slaughter and rapine (p. 252)."

The Chilean method of conducting the war aroused protest among the diplomatic corps, as is evidenced by the dispatch of Mr. Christiancy to Secretary of State Evarts, March 24, 1880 (Foreign Relations 1880, p. 838). He therein states:

> "This mode of carrying on the war by Chile has produced a strong feeling here among all the representatives of foreign (neutral) powers—English, German, Italian and French. A protest of the diplomatic corps has been suggested . . . not only against attacks made without notice upon the peaceable citizens of unarmed towns, but to insist that, before any of the towns upon the coast, even Callao, should be bombarded, a reasonable time should be given for the inhabitants, and especially

neutrals, to remove themselves and their property from danger. . . .

"There will, doubtless, be a meeting of the corps in a few days, and, if so, I shall endeavor to act coolly and with circumspection; and while I shall avoid protesting against any of the regular and legitimate means which one belligerent may, according to the more humane practices of modern warfare, properly use to weaken its opponent, I shall nevertheless join in protesting against all such measures as are supported only by savage or semi-barbarous practices of past ages, but condemned by the more humane codes of modern warfare. Humanity has some rights, even higher than those of belligerents."

Further evidence of the ruthlessness and vandalism of the Chilean method of conducting the war, calculated to leave undying hatred in the minds of the defeated peoples, is to be found in the records of that period left by the Chilean historian, Gonzalo Bulnes (Appendix, Exhibit 28); in the reports of the Letelier Expedition (Appendix, Exhibit 28) and of the Lynch expedition (Appendix, Exhibit 29); and in the report of Admiral Lynch, Commander-in-Chief of the Chilean forces, containing a recommendation by Colonel Barahona for promotion of officers who had ordered the execution of 48 prisoners, admittedly the most passive of native Indians, because he had not, as he claimed, sufficient troops to guard them (Appendix, Exhibit 30).

But for the fact that the Chilean conduct of the war was in keeping with the unconscionable ends the war was designed by Chile to subserve, the inhuman and uncivilized method of conducting it might not have a special importance; but as a reflection of a continuous policy and attitude, the method of conducting the war must find a place in the development of the Chilean program for the annexation of the territory and natural resources of its neighbors.

III

The Peace Negotiations

The war resulted in an easy victory for Chile. The United States at an early stage of the conflict, manifested its deep interest in bringing it to a close. Its insistent offers of mediation succeeded to the extent that a meeting was brought about in 1880, between plenipotentiaries of the three belligerents and the American Ministers accredited to those countries on board an American naval vessel, the *Lackawanna*, in the Harbor of Arica (Appendix, Exhibits 31 and 32). Chile having maintained that the war on her part was not a war of conquest, a position she has consistently sought to maintain (see Circular Note of the Chilean Minister of Foreign Affairs, December, 1918, page 27), but that she sought only reparation and "guaranties" for the future, it seemed not unreasonable to hope that an acceptable arrangement might be made. At the Arica Conference one of the Chilean delegates, addressing the Conference, stated: "Chile neither desires nor will she ever consent to establish the right of conquest. What she asks is a just compensation for her sacrifices in this fatal struggle, and protection to communities essentially Chilean, who would not accept the fact of their abandonment, since they live and flourish under the shadow of her flag."

Apart from the fact that Chilean communities did not exist in any Peruvian territory, and that it is difficult to conceive of an abandonment of communities which did not exist, the quotation evidences the Chilean avowal that conquest was not her aim, and therefore stimulated the American Government to find a method by way of indemnities for satisfying the professed Chilean aim. (Appendix, Exhibit 32.) A

proposal was, therefore, made by the Bolivian representative, Señor Baptista, Sen. Ex. Doc 79, *supra*, page 415 (Appendix, Exhibit 32), that Chile should fix her indemnities and her conditions, retaining possession of the Peruvian territory then occupied by her arms, as a guaranty, until she should receive the satisfaction of her demands.

If conquest was not the object of the Chilean policy, surely the formula presented by the Bolivian Delegate offered a solution of the problem, for it left the amount of indemnity unlimited, and left Chile in possession of the Peruvian territory until the indemnity was paid. While one of the Chilean delegates stated "that he understands this solution," he added, "that it is not that which the instructions of their (Chilean) Government impose upon them, and although personally he thinks these suggestions worthy of consideration, he is compelled to remain within the limits of the instructions received." The instructions are important not only because they indicate the Chilean policy looking to the conquest of the Bolivian littoral and of the Peruvian province of Tarapacá, but because they also show what was the Chilean policy with respect to the occupation of the Peruvian provinces of Tacna and Arica, which time and again the Chilean delegates asserted were to be held only until a money indemnity was paid.

The Chilean terms which opened the Conference, and, as the American delegates later stated, were calculated to render it abortive, included in the main (1) the unconditional cession to Chile of the whole Bolivian littoral and of the Peruvian province of Tarapacá; (2) the payment to Chile by Bolivia and Peru jointly of the sum of twenty million pesos and (3) the retention, on the part of Chile, of the Peruvian territories of Moquegua, Tacna and Arica, occupied by the Chilean

forces, until the payment above mentioned had been effected (Appendix, Exhibit 32).

The conditions seemed shocking to the United States in the light of Chile's avowal that the war was not one of conquest. Tarapacá alone was of immense value in nitrates and yielded large sums to Chile during its military occupation. In nitrate alone Chile has already obtained from the province of Tarapacá a sum in excess of 150,000,000 pounds sterling, a sum which will doubtless be many times multiplied before the nitrate resources of Tarapacá are exhausted. Peru, encouraged by the opposition of the United States to the annexation of Peruvian territory, felt impelled to oppose the cession of Peruvian territory, but offered to arbitrate the question of indemnities and other questions arising out of the war, in which proposal Peru had the hearty support of the United States. Señor Vergara, one of the Chilean Plenipotentiaries at the Arica Conferences, rejected the proposal in these words:

> "Chile seeks an enduring peace, which shall consult both her present and future interests, which shall be proportioned to the elements and power she possesses to obtain it, to the labor already performed, and to well-founded national aspirations. This peace she will negotiate directly with her adversaries when they accept the conditions she deems necessary for her security, and there is no reason whatever why she should deliver up to other hands, honorable and secure as they may be, the decision of her destinies. For these reasons she declares that she rejects the proposed arbitration." (Appendix, Exhibit 32.)

The rejection by Chile of the solution of arbitration, and its insistence upon conquest, while disavowing the intention of conquest, appear to mark the fixed policy of Chile for years to come, for the attempts of the

Latin-American countries to dedicate themselves to the principle of obligatory arbitration and the abolition of conquest on the American continent, were frustrated at every Pan-American Conference by the refusal of Chile to support these manifestly sound and civilized principles. (Appendix, Exhibits 102–111.) The reasons for her refusals are obvious. Although Chile must have known, and as the attending American representatives reported, must have intended the conferences at Arica to result in failure, General Adams, the United States Minister at La Paz, in a dispatch to the Department of State under date of November 6, 1880, suggests what was probably the major motive in the Chilean consent to enter the conferences, namely the effort to detach Bolivia from Peru, and jointly to have Chile and Bolivia continue the war against Peru, compensating Bolivia for the surrender of her littoral to Chile by transferring to Bolivia some of the Peruvian territory conquered and still to be conquered. This aim of Chile is best presented in the words of General Adams himself, on his return from the Arica conference:

> "I have the honor to advise you that I have returned to my post after the failure of the peace conference at Arica. I do not think that either our Government or its representatives have any cause to reproach themselves nor feel that the efforts made, although without apparent result, have been entirely misplaced. . . .
>
> "The decided expressions of the Plenipotentiaries not to modify their first bases, no doubt influenced by public opinion in their country, which was opposed to peace, and the causes of this feeling said to be mainly based upon an official note to Mr. Christiancy by the Government of Peru, will probably be fully explained and commented upon by Mr. Osborne; as will also Mr. Christiancy, without doubt, give his views upon the popular feeling in Peru, and how much the Govern-

ment of that Republic through its Plenipotentiaries was able to concede, and also upon the rather proudly, if not offensively, expressed refusal by Chile to accept arbitration as proposed by Peru and accepted by Bolivia.

"The matters are as between Chile and Peru, and I wish to add to the history of the proceedings simply that the proposition made by Bolivia to surrender the coveted territory under failure to pay a large war indemnity in a fixed limit of time, which would have guaranteed its peaceful possession to Chile, as neither Peru nor Bolivia would have been able to pay it, seemed to me at least well worthy of respectful consideration; but inasmuch as the proceedings do not show that the Government at Santiago had even been consulted thereon, and its Plenipotentiaries in the conference had but little to say about it, it seems to me that the Government was not very much in earnest in its desires for peace; that the conditions at first submitted were meant to preclude any probability of being accepted and that from the first our efforts might be considered inutile and in vain.

"The main endeavors of the Chileans in private conferences with the Bolivians, communicated to me confidentially by the latter, were made to break up the alliance between Peru and Bolivia, and engage the latter Republic in an alliance with themselves as the unavoidable result of such action. Great inducements were held out, a share in the conquests already and still to be made; but I am glad to say that such perfidy and disregard of national honor was not consummated; and if, on being consulted on that subject, I took a decided stand in declaring that such proceeding, no matter how beneficial it might be to Bolivia, would be considered by my Government and no doubt by the world, as one of the most infamous transactions in history, would reflect no credit on either nation, but lasting infamy on all persons connected therewith, and that I would neither be a party thereto nor even be considered officially cognizant thereof,

I hope that I only expressed your own sentiments. The advances so made by one of the Chilean Plenipotentiaries were rejected; and if by the unfortunately existing alliance with Peru, Bolivia is deprived from making peace, which it so much needs and desires, it can at least hold up its head amongst nations and be able to say that it will bear misfortune rather than dishonor."

(Sen. Ex. Doc. 79, *supra*, Papers relating to the War in South America, p. 15.)

Sir Spencer St. John, British Minister at Lima, reported to Earl Granville on June 7, 1880, the Chilean intention to offer Tacna and Arica to Bolivia. He says:

"We hear that after the taking of Arica, the Chileans will offer peace. If their terms be rejected they will endeavour to detach the Bolivians from the alliance by offering them the long coveted possession of Tacna and Arica which would connect them with the sea."

A later despatch, from Sir Spencer St. John, July 5, 1881, gives some details of a secret agreement between Chile and Bolivia to give effect to the above. He says:

"Mr. Adams then told me that Mr. Osborne showed the Bolivian Plenipotentiaries a copy of a secret Treaty which Chile had authorized him to propose which was to the effect that if Bolivia would cede to them the province of Antofagasta and Atacama, the Chileans would compensate Bolivia with Peruvian territory and guarantee them the possession of the Provinces of Moquegua, Tacna and Arica. That the Bolivians were inclined to accept this solution, abandon the alliance and aid in the dismemberment of Peru and were only prevented doing so by his energetic remonstrances.

"In reply to a question, Mr. Adams said he believed that Bolivia had either signed a Treaty to the above effect with Chile or was prepared to do so. He could not positively affirm that the

Treaty had been signed though he had good reason to believe that the preliminaries had been settled."

Chile's refusal to negotiate on any but her own terms ended the Arica conferences. The disturbed condition of affairs, however, and the jeopardizing of the interests of foreign investors in Peru, led to a movement among several European countries to initiate proceedings for mediation. The French Government particularly concerned itself with this endeavor and the interviews and exchange of views between the French President and the United States Minister at Paris, Mr. Morton (See Appendix, Exhibits 36, 37 and 38) led Secretary of State Blaine to initiate new steps looking toward mediation and a termination of the conflict.

The peculiar position of the United States toward the Latin-American Republics, incidental to the Monroe doctrine, deprived Peru of all the advantages of European mediation, and thereby increased, if anything, as Secretary Blaine realized, the moral responsibility of the United States to terminate the devastating conflict. The views of the United States, however, expressed by Secretary of State Blaine, as to the conditions of termination differed in no material respect from those entertained in Europe. Mr. Morton, for example, United States Minister to France, in expressing to Secretary Blaine the views of President Grévy of the French Republic, states that the President had informed him that "annexation by a victorious nation of the whole or a large part of the territory of the subdued nation, or even the exaction of an undue indemnity of war, was contrary to the now admitted rights of nations, as well as to the interests of neutrals. That a victorious nation had a right to secure the fruits of its victories there was no doubt, but it had not the right to impose upon its powerless enemy burdens amounting to annihilation."

Mr. Blaine, perhaps one of the best informed students of Latin-American affairs of the time, reflects the mature views of the United States on the conflict and on the conditions for its termination, in two important instructions which he issued June 15, 1881, to the United States Ministers at Santiago and Lima respectively. To Mr. Kilpatrick, United States Minister at Santiago, he wrote:

> "Without entering upon any discussion as to the causes of the late war between Chile on the one side and Peru and Bolivia on the other, this Government recognizes the right which the successful conduct of the war has conferred upon Chile; and, in doing so, will not undertake to estimate the extent to which the Chilean government has the right to carry its calculations of the indemnities to which it is entitled, nor the security for the future, which its interests may seem to require. But if the Chilean Government, as its representatives have declared, seeks only a guarantee of future peace, it would seem natural that Peru and Bolivia should be allowed to offer such indemnity and guarantee before the annexation of territory, which is the right of conquest, is insisted upon. If these powers fail to offer what is a reasonably sufficient indemnity and guarantee, then it becomes a fair subject of consideration whether such territory may not be exacted as the necessary price of peace.
>
> "But at the conclusion of a war avowedly not of conquest, but for the solution of differences which diplomacy had failed to settle, to make the acquisition of territory a *sine qua non* of peace is calculated to cast suspicions on the professions with which war was originally declared. It may very well be that at the termination of such a contest the changed condition and relation of all the parties to it may make readjustment of boundaries or territorial changes wise as well as necessary; but this, where the war is not one of conquest,

should be the result of negotiation and not the absolute preliminary condition on which alone the victor consents to negotiate. At this day, when the right of the people to govern themselves, the fundamental basis of republican institutions, is so widely recognized, there is nothing more difficult or more dangerous than the forced transfer of territory, carrying with it an indignant and hostile population and nothing but a necessity proven before the world can justify it. It is not a case in which the power desiring the territory can be accepted as a safe or impartial judge." (Foreign Relations, 1881, p. 132.)

And to Mr. Hurlbut, United States Minister at Lima, he wrote:

"The United States cannot refuse to recognize the rights which the Chilean Government has acquired by the successes of the war, and it may be that a cession of territory will be the necessary price to be paid for peace. It would seem to be injudicious for Peru to declare that under no circumstances could the loss of territory be accepted as the result of negotiation. The great objects of the provisional authorities of Peru would seem to be to secure the establishment of a constitutional government, and next to succeed in the opening of negotiations for peace without the declaration of preliminary conditions as an ultimatum on either side. It will be difficult, perhaps, to obtain this from Chile; but as the Chile Government has distinctly repudiated the idea that this was a war of conquest, the Government of Peru may fairly claim the opportunity to make propositions of indemnity and guarantee before submitting to a cession of territory. As far as the influence of the United States will go in Chile, it will be exerted to induce the Chilean Government to consent that the question of the cession of territory should be the subject of negotiation and not the condition precedent upon which alone negotiation shall commence. If you can aid the Government of

> Peru in securing such a result, you will have rendered the service which seems most pressing. Whether it is in the power of the Peruvian Government to make any arrangements at home or abroad, single or with the assistance of friendly powers, which will furnish the necessary indemnity or supply the required guarantee, you will be better able to advise me after you have reached your post." (Foreign Relations, 1881, page 915.)

Proceeding under his instructions, Mr. Hurlbut undertook to carry out Secretary of State Blaine's desire to terminate the conflict on reasonable terms. In Mr. Hurlbut's memorandum of August 25, 1881, to Admiral Lynch, the Commander-in-Chief of the Chilean forces in Lima (Appendix, Exhibit 33), Mr. Hurlbut states:

> "I wish to state further that while the United States recognizes all rights which the conqueror gains under the laws of civilized war, they do not approve of war for purposes of territorial aggrandizement, nor of the violent dismemberment of a nation except as a last resort in extreme emergencies."

It soon became apparent to the representatives of the United States at the scene of conflict that Chile had no intention of making peace on any reasonable terms. In order to strengthen Chile's power to dictate peace on her own terms, and yet prevent American or European mediation, the Chilean representatives entered into conversations with the United States representatives with a view to indicating a willingness to talk peace, thereby prolonging the negotiations and the conflict, and at the same time sought to promote civil war in Peru by erecting first one Government and then another, and dealing with each to the extent that it seemed to serve the Chilean interest in weakening Peru internally so that any conditions of peace would be

accepted, particularly annexation of territory. The Chilean intention can be gathered from a statement made in the Chilean Chamber of Deputies by Señor Vergara, Minister of War, on August 6, 1881, in which he announced that "to celebrate peace at the present time would signify leaving Peru free to regain in a more or less short time her strength; that, therefore, the policy of the Government of Chile was the wisest, namely: to prolong the occupation indefinitely until Peru should be reduced to a state of complete and irretrievable decadence."

A dispatch from Sir Spencer St. John, British Minister at Lima, to Earl Granville, dated August 3, 1881, refers to the "cynical" utterances of the Chilean Minister of War:

> "In the meanwhile reports of the debates in the Chilean Congress have reached Lima and the answer to a question given by Mr. Vergara has been the subject of much remark. Mr. Vergara, Minister of War, said: 'The policy of the Govern-'ment is the most judicious: the occupation pro-'longed until Peru was reduced to a state of decad-'ence beyond recovery and he thought that up to 'the present time, the results justified the plan, as 'well as those who had conceived and carried it out.' It has been remarked that many governments may have conceived such a plan but few would be found thus cynically to avow it."

On April 6, 1881, Sir Spencer St. John, British Minister at Lima, wrote to Earl Granville, British Secretary of State for Foreign Affairs, as follows:

> "This slow progress (of mediation) partly arises from the uncertainty of the intentions of the Chileans: at one time they appeared decided to support Garcia Calderon, then they talked of holding the whole coast until the war indemnity should be paid, now they go further and openly propose a confederation of the two Republics."

Some three weeks later, on April 25, 1881, the same envoy wrote to the British Secretary of State for Foreign Affairs, as follows:

> "It is evident that the Chilean Government have not yet accepted the mediation under the excuse that there is no Government in Peru with which they can treat. That it should be so, however, is entirely their own fault as at first they refused to enter into negotiations with Señor Pierola on account of an imprudent circular addressed to the diplomatic corps, and then having persuaded Señor Garcia Calderon to establish a provisional government, they refused to treat with him because he had not been acknowledged by the whole country.
>
> "As yet we feel uncertain of the intentions of the Chilean authorities; at one time they appear to favour the idea of dividing the country into three distinct republics under their protection; then every one seemed to look to a prolonged occupation of the country, whilst lately there are symptoms of a desire to sign peace with Señor Garcia Calderon's Government under conditions which would render them practically masters of the country.
>
> "We notice few signs of a wish on the part of the Chileans to negotiate a peace honourable to both parties which whilst securing every reasonable advantage to themselves, would permit Peru to recover from its prostration."

On September 13, 1880, just before the Arica Conference, the same British envoy, writing to Earl Granville, had said:

> "It appears to me, however, very doubtful whether Chile is really animated by so peaceful sentiments as those with which she is credited. I much fear that the interference of the United States will retard rather than advance the negotiations for peace. Until it can be explained, it appears to me that the conduct of Chile has been very underhand: although her Government accepted the mediation about the first week in

August, yet our colleagues in Santiago were only informed of it in the first week in September, the object of all the late negotiations being apparently to deceive and to gain time."

That the Chilean appetite for conquest had been whetted to a dangerous extent is indicated by the remarks in the Chilean Chamber of Deputies by Deputy Errazuriz, August 9, 1881. He said:

"We should establish our rule in Peru more thoroughly, obtain from her every advantage, weaken her to the very utmost, and until we get everything which we wish. . . .

"The Mint is still standing intact at Lima; the railroad from Mollendo to Arequipa has not been destroyed. It is necessary to destroy Peru without delay; take away the rails, so as to lay them at Pozo Almonte and Agua Santa, or between Parral and Cauquenes. . . . If we abandon Lima we shall lose the revenues from the Callao customs and the other ports to the north, the war taxes, the guano from the deposits of Lobos and Chincha, and we shall revive the alliance which is already dead. Neither Garcia Calderon, nor Pierola, nor Montero, nor any other will sign the treaty of peace which we wish.

"On the other hand the war has given rise to new industries for our fellow-countrymen, who stifled in this small territory. Already the occupation pays and leaves a nice surplus. The ruin which the crisis had brought is disappearing, and we should now take advantage of Peru and of the booty consequent on victory. The Peruvian customs are endless sources of wealth, they represent five or six millions of dollars to our country. . . . We should not call upon the Peruvian law courts to administer justice; we should administer it ourselves."

That the Chilean aims, though always bent on conquest, grew in the extent of their annexionist ambition as the war proceeded, is indicated by two remarks of Sir

F. J. Pakenham, British Minister at Santiago. On March 28, 1879, prior to the Chilean declaration of war on Peru, writing to the Marquis of Salisbury, he says:

> "At a meeting of the Corps diplomatique held at the Government House on the 26th instant, M. Fierro (Chilean Minister of Foreign Affairs) made a statement to the following effect.
>
> "First, that Chile had no intention of appropriating territory North of 23°."

Later on Dec. 4, 1879, Sir F. J. Pakenham reports:

> "The province of Tarapacá is now in complete possession of Chilean forces and from all I can hear, I believe Chile proposes to retain this region to reimburse herself for the expenses of the war."

On September 16, 1880, a month before the Arica Conferences, Señor Balmaceda declared in the Chamber of Deputies:

> "Reasons historical, legendary, geographical and industrial, make it necessary to carry the war to its end. In the Pacific littoral of South America, there are only two centers of action and progress: Lima and Callao; Santiago and Valparaiso. It is necessary that one of these centers succumb in order that the other may rise. To us Tarapacá is essential as a source of wealth and Arica as an advanced point on the coast."

Mr. Hurlbut, United States Minister at Lima, reporting to Secretary of State Blaine Oct. 4, 1881, on the Chilean intentions and plans, makes the following observations:

> "The evidences of an intention to occupy Peru for an indefinite time are multiplying.
>
> "The Chilean authorities are preparing a full system of internal government, including judicial functionaries. They are carefully examining all sources of internal revenues heretofore belonging to Peruvian authorities, and announce the intention to collect all these by their own officials.

"It is stated that this new order of things will go into effect on the first of December. The effect of such a declaration will be disastrous to all foreign interests in this country and will at once revive war in its worst form.

"The custom houses now yield to Chile from nine to ten millions per annum. Add to this the internal revenues, and it is evident that, so far as the Chilean Government is concerned, they will make money by the occupation. . . .

"The establishment of this policy by Chile means absolute ruin to these interests, involving many millions of dollars."

* * * * * * *

"There is a very decided tone of arrogance, both in the press of Chile and among their officers, born I think of their singular success in this war, which may easily become offensive.

"The mask which the Chilean Government has worn to cover the real purpose of this war is now removed, and it is openly avowed that peace will not be permitted except on condition of cession of territory.

"In looking back upon the whole history of events, prior to hostilities and since, I can have no doubt but that the purpose, end and aim of this war, declared by Chile against Peru and Bolivia, was in the beginning and is now, the forcible acquisition of the nitrate and guano territory both of Bolivia and Peru.

"Everything else is made to bend to this purpose, and there is no reality in any pretense of peace on any other terms."

(Message from the President of the United States transmitting papers relating to the War in South America, January 26, 1882, Sen. Ex., Doc. 79, *supra*, pp. 572–528.)

Just before the Lima Conferences of 1881, which Secretary Blaine initiated through Mr. Hurlbut, Mr.

Hurlbut reports to the Secretary of State, October 26, 1881, as follows (Appendix, Exhibit 34):

> "The two Chilean plenipotentiaries, Altamirano and Novoa, have arrived today. They are said to have full powers. They will either recognize the Calderon Government or fail to find any with which they can treat. If they do not recognize that Government I shall consider such fact evidence that they do not want peace. If they do, and peace negotiations commence, I believe they will drop the word 'cession' and substitute 'pledge'; that they will demand an enormous indemnity, and to hold the southern provinces as pledge and security for the payment.
>
> "Peru will offer thirty or forty millions as indemnity. This will be refused, and then affairs are at a stand. Peru will then offer to submit the question of amount to arbitration. This offer, I think, will be refused.
>
> "It seems to me that the opportunity for the United States will be to insist early in the negotiation, and forcibly, that the principle of arbitration shall be accepted and acted on.
>
> "The mode of such insistence must, of course, be determined by the Department, but I feel sure that it ought to be done, and done at an early stage, and before Chile commits herself by a refusal to entertain arbitration. I have no doubt of the result if so done. Chile cannot afford to refuse it. Peru asks nothing but an impartial arbitrator, and the result will place the United States where it ought to be, as the acknowledged head of the republican system of America."

Mr. Christiancy, Mr. Hurlbut's predecessor at Lima, saw very clearly that the policy of Chile was to deprive Peru of any stable form of government, and to deal as occasion might warrant with different heads of governments, discrediting each before its own people, thus dividing the allegiance of the people and producing a state of civil war and an incompetence of any govern-

ment fully to deal as the representative of Peru. This was particularly so in view of the fact that neither the Pierola Government, nor the Garcia Calderon Government, nor its successors were willing to cede away the territory containing the natural resources of Peru, for it was only with a government prepared to do that that Chile was willing to deal. Minister Christiancy in reporting to the Secretary of State on the development of Chilean policy in this respect, stated on May 9, 1881, confirming the report of the British Minister to the British Government of April 25, 1881, above quoted, as follows:

> "Perhaps I ought to add here (what sufficiently appears in my former dispatches) that the principal grounds upon which the Chilean authorities claim to base the right to adopt this policy of indefinite occupation, viz: that it has become necessary, because the Peruvians have neglected to form a government with which they could treat, and the anarchy which results from this state of things has been deliberately produced by their own action, and to all appearance, for the very purpose of furnishing a pretext for the policy which they have finally adopted. They could have readily treated with Pierola, who was anxious to treat, and who had been and still is recognized by all the Governments represented here, and by the Chileans themselves at Arica. But they refused to treat with him, and encouraged the setting up of the provisional Government of Calderon, and from time to time encouraged that Government in its efforts to some extent, but soon began to treat it with contempt, and to cut off from it one privilege after another, still allowing it to appeal to the people of Peru for their adhesion, and to call Congress together, thus dividing the people of Peru between Pierola and Calderon in a manner which threatened civil war. . . . (Sen. Ex. Doc. 79, *supra*, p. 494.)

The United States had recognized the Garcia Calderon Government in the belief that by so doing they would enable that Government to attain sufficient authority to make peace with Chile, a purpose which was frustrated by the Chilean policy. Mr. Christiancy states in a dispatch to the Secretary of State, June 21, 1881, reporting a conversation with the Chilean representative at Lima:

> "He did not know that I knew he and the Chilean authorities had been coquetting with the friends and commissioners of Pierola. But I could readily see from this, as well as the conversation referred to in my dispatch No. 319, that they did not wish any encouragement or prestige to be given to the Calderon government, except what they might choose to give; and I could not but infer they were playing off the Calderon government against that of Pierola, for the purpose of furnishing a plausible pretext for holding the whole of Peru, or so much of it as they could." (Message from the President of the United States, transmitting papers relating to the War in South America, January 26, 1882, Sen. Ex. Doc. 79, *supra*, p. 503.)
>
> "But I am now fully satisfied that Chile does not intend to make peace with Peru at all unless driven to do so by outside pressure." (Sen. Ex. Doc. 79, *supra*, p. 504.)

After Mr. Hurlbut entered the negotiations, and had followed the instructions of Secretary Blaine by protesting the Chilean terms which made annexation of a most important part of Peru a *sine qua non* of peace, he sought to find a formula by which an indemnity could be substituted for territorial annexation, and with this end in view undertook discussions with Provisional President Garcia Calderon of Peru. In reporting the conversations and his observations to the Secretary of

State, August 10, 1881, Mr. Hurlbut makes the following remarks:

> "Mr. Calderon says to me that he will not consent, in any event, to the division of Peruvian territory, and that he will endure any consequences. He also says that he is prepared to pay any indemnity in reason, to twenty, thirty, or even forty millions of dollars, and inasmuch as the Chilean Government officially states that $30,000-000 is the limit of their war expenses, and that they have received large sums, the indemnity would seem to be abundant. I fear that Peru, *alone*, cannot hope for endurable terms of peace from Chile, yet although utterly beaten in the war, she ought still to be considered as a nation.
>
> "All South America, except Brazil, is opposed to the pretensions of Chile, and all, without exception, look to the United States as the sole hope for the future of Peru, and as the only power capable of checking this greed of conquest.
>
> "It is, in my deliberate and carefully considered judgment, the proper time for the United States to act as a friend to both parties, and to say very kindly, but very firmly, to Chile, that war has fulfilled all its legitimate purposes; that longer continuance of the state of war would be disastrous to both countries, and an unnecessary invasion of the rights of neutrals, engaged in commerce or owning, as they do, large properties in Peru; and that a peace honorable to both countries should be concluded as soon as possible, on fair terms as to indemnity. It will be remembered that Chile in the Arica conferences denied any purpose of acquiring territory by conquest, and placed her demand for cession of territory solely upon the ground that Bolivia and Peru had not the means to pay a money indemnity.
>
> "Inasmuch as Peru offers to pay and can pay a money indemnity, the forcible annexation of territory ought not to be permitted. By such action on the part of our Government we would

gain the highest influence in South America, we should subserve the purposes of a truer civilization, and inaugurate a higher style of national and international law on this Continent." (Message from the President of the United States transmitting papers relating to the War in South America. Sen. Ex. Doc. 79, *supra*, p. 510.)

In his dispatch of November 9, 1881, to the Secretary of State, Mr. Hurlbut adds (Appendix, Exhibit 35):

"The policy of Chile is transparent, and is in fact avowed in a semi-official way by their organ in this city, *La Situacion*. It is to hold this country under armed occupation until they can find or create some one with whom they can make peace on their own terms. The Calderon government, supported by nearly the whole of Peru, was rapidly acquiring a dignity and position which must have been recognized by all nations, but it was known that it would not submit to mere dictation of terms of peace. Therefore, by the use of pure force, the head of that government has been removed, and secret negotiations opened with Pierola." (Sen. Ex. Doc. 79, *supra*, p. 561.)

When the Chilean Government found it impossible to obtain from Garcia Calderon the cession of Peruvian territory they desired, they removed him from office, arrested him and carried him off to Santiago in a manner described by Mr. Hurlbut in his dispatch to the Department of State of November 9, 1881 (Appendix, Exhibit 35). The second effort of Secretary Blaine to bring about mediation and a settlement of the conflict, thereupon ended in failure.

But the Secretary of State, not discouraged, renewed the effort by the appointment of a special mission headed by Mr. Trescot, of South Carolina, in the hope that a change of representatives might produce more favorable results. His instructions, of December 8, 1881, to Mr. Trescot, were in part as follows:

"You will say that this Government recognizes, without reserve, the right of Chile to an adequate indemnity for the cost of the war, and a sufficient guarantee that it will not again be subjected to hostile demonstrations from Peru, and further, that if Peru is unable or unwilling to furnish such indemnity, the right of conquest has put it in the power of Chile to supply them, and the reasonable exercise of that right, however much its necessity may be regretted, is not ground of legitimate complaint on the part of other powers.

"This Government also holds that between two independent nations hostilities do not, from the mere existence of war, confer the right of conquest, until the failure to furnish the indemnity and guarantee which can be rightfully demanded.

"The United States maintain, therefore, that Peru has the right to demand that an opportunity should be allowed her to find such indemnity and guarantee. Nor can this Government admit that a cession of territory can be properly exacted, far exceeding in value the amplest estimate of a reasonable indemnity."

The instructions ended with the declaration that:

"If our good offices are rejected, and this policy of the absorption of an independent State be persisted in, this Government will consider itself discharged from any further obligation to be influenced in its action by the position which Chile has assumed, and will hold itself free to appeal to the other republics of this Continent to join it in an effort to avert consequences which cannot be confined to Chile and Peru; but which threaten with extremest danger the political institutions, the peaceful progress and the liberal civilization of all America. . . ."

If, however, none of these embarrassing obstacles supervene, and Chile receives in a friendly spirit the representations of the United States, it will be your purpose:

"First. To concert such measures as will

enable Peru to establish a regular Government and initiate negotiations.

"Second. To induce Chile to consent to such negotiations without the cession of territory as a condition precedent.

"Third. To impress upon Chile that in such negotiation she ought to allow Peru a fair opportunity to provide for a reasonable indemnity; and in this connection, to let it be understood that the United States would consider the imposition of an extravagant indemnity, so as to make the cession of territory necessary, in satisfaction, as more than is justified by the actual cost of the war and as a solution threatening renewed difficulty between the two countries. . . ."

"Already by force of its occupation, the Chilean Government has collected great sums from Peru; and it has been openly and officially asserted in the Chilean Congress that these military impositions have furnished a surplus beyond the cost of maintaining its armies in that occupation. The annexation of Tarapacá, which, under proper administration, would produce annually a sum sufficient to pay a large indemnity, seems to us to be not consistent with the execution of justice." (Foreign Relations, 1882, p. 143 et seq.)

Mr. Trescot undertook to carry out his instructions. The Chilean Minister of Foreign Affairs, Balmaceda, becoming uneasy at the insistence of the United States on mediation and fearing that Chile might thus be deprived of the objectives of her ambition, issued, on December 24, 1881, a circular note in which he states:

"We alone undertook the war and in the exercise of our sovereignty and in the sphere of our legitimate international liberty we alone shall conclude it."

The tragic assassination of President Garfield brought about a change in the Department of State. Secretary

Blaine was succeeded, on January 1, 1882, by Mr. Frelinghuysen. The vigorous instructions of Secretary Blaine, in the light of the Chilean intransigeance, persuaded Secretary Frelinghuysen to modify the instruction of Mr. Trescot on the ground that it was feared that further pressure on Chile might compel the United States to resort to force of arms in support of its views as to appropriate conditions of peace. (Instructions of Secretary Frelinghuysen to Mr. Trescot, January 9, 1882, Foreign Relations, 1882, page 57.)

Early in January, 1882, Minister Balmaceda formulated for Mr. Trescot the Chilean conditions of peace, which included among other items: (1) the unconditional cession of Tarapacá; (2) the occupation of Tacna and Arica for ten years, at the end of which time Peru was to pay twenty million pesos; and (3) Tacna and Arica to be ceded to Chile if the money was not paid in the time indicated. (Appendix, Exhibit 39.)

Secretary Frelinghuysen, on February 4, 1882, telegraphed Mr. Trescot "that in no event would the United States take part in negotiations based upon the surrender of Tarapacá, and a further indemnity of twenty million pesos, as such a demand is considered exorbitant." (Appendix, Exhibit 40.)

The Chilean Minister of Foreign Affairs, Mr. Balmaceda, in the *Diario Oficial* of January 14, 1882, undertook to assert, in answer to the United States' criticism of Chile's terms, that these terms had the approval of the European Governments. It appears, however that both the British and the French Ministers, Sir J. F. Pakenham, and Baron d'Avril, protested this assumption and stated in their notes of January 14th and 15th, 1882, respectively, that they had transmitted the Chilean terms to the other belligerents without comment.

The renunciation of its mediatory efforts by the

United States was the very end which the Chilean Government sought to bring about, and was regarded in Chile as a notable victory. In a protocol on the conditions of peace which was concluded between Mr. Trescot and Minister Balmaceda at Viña del Mar on February 12, 1882 (Appendix, Exhibit 41) the withdrawal of American mediation was made a condition precedent. The conditions on which Chile offered to make peace as embodied in the protocol, included, besides the cession of Tarapacá, among other matters, the "occupation of the region of Tacna and Arica for ten years, Peru being obliged to pay twenty million pesos at the expiration of that time. If at the expiration of that time, Peru should not pay to Chile the twenty millions of pesos, the territory of Tacna and Arica should remain *ipso facto* ceded to and incorporated in the territories of the Republic of Chile. Peru may fix in the treaty of peace a time longer than ten years in conformity with the conditions just before stated. If Arica returns to the power of Peru it shall remain forever unfortified."

This protocol was drawn for the mere purpose of its transmission to Peru by the United States representative. On requesting instructions from the Department of State whether to submit to Peru the conditions of peace thus formulated, Mr. Trescot received a negative answer, and on February 14, 1882 (Appendix, Exhibit 42), informed Minister Balmaceda as follows:

> "The Government of the United States, while desirous to offer its impartial cooperation and its friendly aid in such negotiations as may lead to a peace satisfactory to both belligerents, cannot tender its good offices upon the conditions proposed. I am further instructed to inquire whether the Government of Chile is prepared to make any modification of these terms; and, if so, what they are?"

The answer to this inquiry was given to Mr. Trescot by Minister Balmaceda on February 24, 1882 (Appendix, Exhibit 43) and answered Mr. Trescot's particular inquiry in the following language:

> "And finally I have the honor to say to you, in the name of His Excellency, The President of the Republic, that we maintain the conditions of peace set forth in the document already cited, because they are demanded by absolute rigorous necessity on account of expenses and the damages caused by the war, the security of the Republic and its future stability."

Mr. Trescot informed the State Department of Chile's refusal to modify its terms, and considering his further presence in South America useless, requested permission to return to Washington. Thus failed the Trescot Mission.

Secretary Frelinghuysen, apparently discouraged by the failure of all mediation, nevertheless made one further attempt to terminate the war by American intercession, but in so doing abandoned Secretary Blaine's policy and accepted the cession of territory as the basis of future negotiations. The new mission was entrusted to Dr. Cornelius J. Logan. His instructions, dated June 26, 1882 (Foreign Relations, 1883, page 74) were: to "continue the efforts of your Government to induce Chile to settle the difficulty by such moderation in her demands as you may be able to bring about. . . . Your efforts, therefore, must be directed towards securing for Peru as large a part of these occupied provinces in the treaty of peace as possible, and as large a money indemnity as possible for whatever territory may be retained by Chile." After several months' efforts, in which Mr. Logan was unable to move the Chilean Government toward moderation, Mr. Logan, on October 18, 1882, formulated for Mr.

Luis Aldunate, Chilean Minister of Foreign Affairs, various alternatives for peace which constituted a résumé of the various proposals that had been advanced by either side (Appendix, Exhibit 44).

Among these alternatives we find the first suggestion for a modification of the Chilean position with respect to Tacna and Arica, which theretofore at the Arica Conference and in the Viña del Mar protocol had involved a retention of these provinces as a guaranty of the payment by Peru of an indemnity. Mr. Logan's suggestion for a plebiscite which, he says to Minister Aldunate, "came from your excellency's Government" that is, it was made on Chilean initiative, is the first official announcement of the association of the disposition of Tacna and Arica with a plebiscite of its people. Mr. Logan's alternatives read, in part, as follows:

> "Third. This suggestion came from your excellency's Government, and was made into a formal proposal by myself. Owing to a mistake of my own, as to one of the conditions, the proposition was first made to Señor Calderon as follows: Chile to have military occupation of Tacna and Arica for five years, at the end of which time a vote to be taken by the people of the territory to determine whether they would attach it to Chile or to Peru. If the vote took the territory to Chile, the latter was to pay Peru $10,000,000 in compensation. Chile was to pay Peru $3,000,000 as a loan, upon the ratification of the treaty, and if Chile afterwards obtained the territory by a vote of the people thereof, this amount was to be deducted, leaving Chile seven millions still to pay. If the territory went to Peru, the latter was to repay the three millions with 6 per cent interest, and Chile was to retain possession of the territory until the whole amount was paid.
>
> "The mistake made by me above referred to, was that your excellency's Government while being willing to pay $10,000,000 for the territory,

if voted Chile, also expected to receive $10,000,000 if voted to Peru.

"Señor Calderon, however, refused the proposal in its more favorable form, and it was useless to present it to him in the other form, even if I had felt authorized to commit my own Government to it in that shape.

"Fourth. I proposed to Señor Calderon that Chile should have military occupation of Tacna and Arica for ten years, and then evacuate it. He declined this, and it was not presented to your excellency."

This proposal and another involving the sale of Tacna and Arica for ten million soles or pesos were forwarded by Mr. Logan to Vice-President Montero on November 13, 1882 (Foreign Relations, 1883, page 86). It will be recalled that the provisional President, Señor Garcia Calderon, was still a prisoner of the Chileans in Santiago, and had been unwilling to accept the Chilean terms. On communication of these terms to Secretary Frelinghuysen, for his approval, the Secretary answered on January 5, 1883 (Foreign Relations, 1883, page 90): "For this Government to instruct (you) to inform Peru to give up Tarapacá, Tacna and Arica for $10,000,000 would be pretending to settle a dispute between two Governments without being asked to do so, and would be saying to Chile it had a right to the territory," a position which the United States Government has never conceded.

Mr. Logan, nevertheless, pressed the Peruvian Government to accept the Chilean conditions of peace and transmitted Chile's threats to continue the destruction of Peruvian towns. The situation thus created induced the establishment of the new government of General Iglesias. This government ultimately accepted the Chilean terms, with certain important modifications to be discussed presently, as a basis for peace.

Peru has always appreciated the friendly intentions of the United States Government which throughout was actuated not by special friendship for either party to the war, but by the conviction of an impartial observer that Chile's wilful act of aggression amounted to spoliation. Yet, while grateful for the views officially expressed by the United States on so many occasions, the conclusion cannot be escaped that the intercession of the United States, beginning with the strongest expressions of protest and disapproval of the Chilean aims and demands, a disapproval never modified in fact, nevertheless terminated by a discouraged submission to the Chilean demands and a withdrawal of mediation. The effect of the failure of the United States policy, however unintended it may have been, was to encourage the Peruvian Government to unnecessary and disastrous resistance to the unjust demands of Chile, bringing about the ruin of the country and imposing, by the devastation wrought by the Chilean invaders, enormous and incalculable sacrifice on her people, while at the same time preventing the friendly intercession of European countries, the interests of whose citizens were being progressively injured by the destruction of property effected by the invader. The result was to leave Peru in 1882 alone in her tragic fate at the hands of a merciless conqueror. Mr. Hurlbut, United States Minister at Lima, in one of his last letters to Secretary Blaine, says, Oct. 26, 1881:

> "If the United States, after denying to these people every application for aid from any European state, shall themselves refuse any help in their desperate situation, it would seem to be almost a breach of national faith. I, myself, am a profound believer in the right and duty of the United States to control the political questions of this continent, to the exclusion of any and all European dictation; this I believe I understand to be the

opinion held also by the American people and to have been asserted by Congress. This I also understand to be the doctrine of the administration which sent me to this place." (Sen. Ex. Doc. No. 79, War in South America, 1882, p. 537.)

Chile had already brought chaos to Peru, depriving Peru of every opportunity to organize a government. Mr. J. R. Graham, the British Chargé d'Affaires at Santiago, reported to Earl Granville, May 15, 1882, that Chile, therefore, had sought to set up artificially a government which would agree to the Chilean terms. Mr. Graham says:

> "The determination, therefore, come to by the Chilean Government only to recognize a provisional Government in this country if they agree to sign a previous Treaty of Peace is apparently an indication that they entertain no present wish to relax the firm hold they have fixed upon their prostrate foe."

Again Mr. Alfred St. John, the Chargé d'Affaires at Lima, writes to Earl Granville, February 13, 1883:

> "As long as the Chilean authorities do not afford every facility to the inhabitants of the towns occupied by the forces, no genuine Congress can ever be brought together and it is a remarkable feature of the policy pursued by the Government of Chile that they purposely impede such meetings which is the only mode of consulting the people of Peru on the subject of Peace."

Confronted by the distressing condition of the country and considering that the military occupation was being indefinitely prolonged, with no hope whatever of securing more satisfactory peace conditions, since the friendly intervention of the United States was growing more lukewarm in proportion to the steady advance of Peru upon the road of complete exhaustion, General Miguel Iglesias, with the support of

those who likewise felt the urgent necessity for peace, decided to organize a government which would consent to accept the exacting demands of Chile, although he was firmly determined not to yield upon the issue of the cession of Tacna and Arica. This undertaking was countenanced by Chile, without whose consent it could not have been accomplished.

The Chilean Government named as its plenipotentiary to the peace conference, Don Jovino Novoa. Those of Peru were Don José Antonio Lavalle and Don Mariano Castro Zaldivar. The negotiations, though they were practically dominated by Chilean dictation, opened in January, 1883. The Chilean delegate submitted a memorandum for peace on the following basis: (1) the absolute and unconditional cession of Tarapacá; (2) the sale of Tacna and Arica for ten million pesos, three millions payable at the ratification of the treaty and the balance payable in two, four and six years; (3) the territories ceded and bought to bear none of the Peruvian debt.

When it is borne in mind that practically the whole of the Peruvian foreign debt was guaranteed by the natural resources of Tarapacá, the additional injury inflicted on Peru by annexing the pledged resources, yet leaving the debt to be borne solely by Peru, will become apparent. This harshness was modified on the insistence of Peru's European creditors only to the extent of Chile's consenting that fifty per cent of the proceeds of the sale of guano, not nitrate, were to be allocated to Peru's creditors, a concession of trifling importance. The Chilean terms, particularly the second and third, aroused serious protest from General Iglesias and from the Peruvian delegates. The negotiations continued. The Chilean delegate, Novoa, records the Peruvian objections to his own position in the following note to Castro Zaldivar:

"On my (Novoa's) declaration, so far as concerns the cession of Tarapacá, that it was impossible to open any discussion on that point, Señor Lavalle and yourself passed to the objections to the second proposition relating to Tacna and Arica. You say that you cannot accept the proposition made, neither for ten millions nor for any other sum, not only because there are in this territory Peruvian interests, which implies an immense sacrifice, but because the population is Peruvian. For my part I wish to remark that the situation born of the war rendered necessary to Chile the possession of these territories and that the fact that the population is Peruvian does not constitute a serious inconvenience, inasmuch as this is always the situation in similar cases; that in the light of the primary interests of peace that could not be an obstacle."

In a later conference the Peruvian plenipotentiary, Lavalle, first proposed the provision for a plebiscite in Tacna and Arica. His proposal read:

"The provinces of Tacna and Arica shall remain within the control of Chile for ten years, after which a plebiscite shall be organized in order that its inhabitants may decide if they wish to come back to Peru or to be annexed to Chile, or to any other nation."

In the second conference of April 9, 1883, the Chilean plenipotentiary accepted the plebiscite with respect to Tacna and Arica. Señor Novoa thus records the conference:

"On the 9th of April we convened again at Chorrillos and concluding the previous conference took up anew the territories of Tacna and Arica. After a long discussion the idea of the plebiscite was accepted as incorporated in the treaty of October 20th. An accord having been reached on this idea, Señor Lavalle claimed that if the popular vote left Tacna and Arica under the sovereignty

of Peru, the latter would not have to pay the ten million pesos, since it would not thereby acquire but would be limited to receiving that which was its own. I insisted upon the necessity of establishing reciprocity since it depended on the popular vote and not on the will of one of the contracting parties that they were later to become Chilean or Peruvian."

On October 20, 1883, the Treaty of Peace was concluded (Appendix, Exhibit 45). It was ratified March 28, 1884. The third article, which has given rise to the present dispute, has already been quoted in full at the beginning of this Case, *supra*, page 21. The Treaty placed the ostensible seal of legality upon as violent a piece of spoliation as modern history records. It was not concluded freely nor did it express the Peruvian will. The inhabitants of both Tarapacá and Tacna and Arica publicly recorded their violent protest against being separated even temporarily from their fatherland. (Appendix, Exhibit 47.)

The failure of Chile to permit a timely holding of the plebiscite has been regarded by every Peruvian Government and the Peruvian people as a ground for the invalidation of the whole treaty, including the cession of Tarapacá. The Chilean Government has, therefore, gained a considerable advantage in the protocol of July 20, 1922, submitting the question of Article 3 to arbitration at this time, by obtaining the admission in Article 1: "It is hereby recorded that the only difficulties arising out of the Treaty of Peace, concerning which the two countries have not been able to reach an agreement, are the questions arising out of the unfulfilled provisions of Article 3 of said Treaty."

That the provisions concerning the temporary occupation of Tacna and Arica, territory without natural resources of any value and with a population of only some thirty thousand, was designed primarily to insure

the uncontested and definitive incorporation and annexation of Tarapacá, territory of enormous natural wealth, to Chile, may be gathered from the remarks of Señor Novoa, the Chilean delegate, as recorded by Señor Larrabure in his important letter to *El Comercio*, May 7, 1900 (Appendix, Exhibit 49). Señor Larrabure there states:

> "Señor Novoa maintained that it was in nowise Chile's intention to remain in definite possession of the provinces; the merest suspicion of such an intention would constitute the gravest affront to the unquestioned honesty and love of justice of his country. But Chile insisted on some guarantee that the promises given would be kept and the covenants duly executed. She feared that as Peru was continually exposed to political upheavals, any revolutionary leader might summon a parliament to meet somewhere in the interior and destroy the fabric erected by Chile at the cost of such great sacrifice.
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> "As a matter of fact, Tacna and Arica were merely to be held as hostages by Chile. The ten years stipulated in 1884 for the holding of the plebiscite, would, by 1894, constitute a species of prescriptive right with respect to the province of Tarapacá. During that time Chile would have an opportunity to consolidate her possession of the wealth in nitrates, which was the only compensation she had demanded for her outlay and her losses.
>
> "Indeed, to quote Señor Novoa once more, at the end of those ten years, Chile would generously return Tacna and Arica to Peru, foregoing the stipulated plebiscite in a praiseworthy attempt to efface, as far as lay within her power, the bitter memories born of the late war. . . . In a word, according to Señor Novoa, what Chile desired was, not a few townships, but the wealth of Peru; and forthwith to assume a pretended generosity of purpose to save herself from incurring our undying enmity."

The treaty of peace, however, ruined Peru and enriched Chile, for it is maintained that the official published documents of Chile, including among others the reports of Admiral Patricio Lynch, in command of the Chilean forces of occupation in Peru, and the financial statements of the Minister of Finance of Chile, all of which are referred to as a part of the Case of Peru and which will be furnished to the Honorable Arbitrator, if desired, affirmatively show that Chile collected more than her war expenses from Peru before the Treaty of Ancon; that Chile has collected many millions from Tacna and Arica since 1894, and that Chile has collected from Tarapacá over one billion five hundred million pesos, not to speak of the vast natural resources explored and unexplored, which will yield billions of revenue to Chile in the future. The result would seem to justify a recent editorial in the *Wall Street Journal* of Monday, April 30, 1923, entitled "Fruits of a Profitable War," which reads as follows:

> "Chileans have for many years past found an easier way (of meeting expenses). Their government is having immense difficulty in convincing them that it is no longer open. In 1879 Chile went to war with Bolivia and Peru. In 1884 a treaty of peace was celebrated by which a province of each of these countries was annexed by Chile. This has nothing to do with the question of Tacna and Arica, solution of which is pending.
>
> "These two provinces, Antofagasta and Tarapacá, contain great deposits of nitrate of soda. Since 1884, Chile has exported 59,453,420 tons of this commodity, on which the government has levied a tax of $12.20 a ton. Tax proceeds to end of last year total, therefore, $725,331,724. Chileans maintain that the nitrate beds will yield double the amount exported last year for more than 100 years longer. Estimating only 50 years' yield at

the same rate as last year, further collection of nitrate export duty will amount to $793,000,000.

"To the total of $1,518,331,724 may be added the proceeds of a tax on borax and iodine, both products of the annexed provinces, and some guano. But the figure as given suffices for this exposition. It is some war indemnity for a country of 3,750,000 inhabitants, considering, moreover, that the war cost less than $55,000,000.

"During the period from 1884 to 1892, Chile collected revenue amounting to $1,672,132,151, of which, evidently, 43½ per cent was derived from the war indemnity. It was really more than 45 per cent, if the other items are included. This revenue did not, however, suffice, as the national debt has been increased by $292,535,640 in the same period, and the government is now facing a deficit of $25,000,000 more. Not every nation can stand the acid test of easy wealth.

"No wonder that Chileans are unused to paying taxes. No wonder that their heads have turned by too much prosperity. For, be it remembered, the people have benefited, not only by tax reduction, but by the whole value of nitrate exported, less cost of production.

"No wonder also that Chile's debt record has been good. The excellent records of Peru and Bolivia are, nevertheless, much more remarkable—and much more wholesome."

It is not without importance to examine briefly, in the light of the recital above, the validity of the two Chilean contentions, (1) that the war was not one of conquest, and (2) that the provisions of Article 3, with respect to Tacna and Arica, imply a complete cession of those provinces to Chile and were so intended. It is to be observed that Chile has in recent years based her alleged need of Tacna and Arica on pretended military considerations of a strategic frontier against Peru.

That the war was not one of conquest has been affirmed by the official and unofficial spokesmen of

Chile without exception. In the latest circular note of the Chilean Minister of Foreign Affairs of December, 1918 (p. 27) it is again stated that the war was not one of conquest, but "in defense of Chile's rights, in circumstances where it was absolutely unprepared, without arms and all its national guard released." The latter statement is not borne out by the dispatch of Mr. Osborne, American Minister at Santiago, Chile, to Mr. Blaine, Secretary of State, July 22, 1881, in reporting the agreement for arbitration then recently concluded between Argentina and Chile. In speaking of these two countries, he says:

> "For years they have been engaged in supplying themselves at great expense with the elements deemed necessary for such a contingency. Millions of dollars which ought to have been devoted to the development of national interests have been expended in the purchase of powerful ironclads and destructive artillery, all in anticipation of the war which has seemed inevitable." (Foreign Relations, 1881, p. 134.)

The Chilean Minister of Foreign Affairs in the note above mentioned goes on to say that the war was "truly protective of the fundamental national interests of the country, forced by the secret treaty which Peru initiated in 1873 to isolate Chile and to serve its political economy of monopoly of the nitrate of Tarapacá, in opposition to the free industry which Chilean capital had created in Antofagasta and which it began in the entire desert of Atacama. . . . . The triumph assured Chilean capital and workers, which had formed the nitrate wealth of Tarapacá and Antofagasta, that they might count for the free development of their industry on the protection of the law of Chile."

Some of the errors of fact and of law in this statement have already been adverted to. All the evidence

points to the fact that the treaty of 1873 was initiated by Bolivia; while there is evidence that the fear of further Chilean encroachment inspired the treaty, it is only to this extent that the charge of intended Chilean isolation has foundation; there is no evidence that the treaty had any connection with the nitrate policy of Peru, a policy which appears to have had full legal warrant and against which neither Chile nor any other foreign country appears to have made any official protest. Moreover, there seems to be no legal foundation for the contention, even if it were true as to the facts, that the development of Antofagasta and Tarapacá by "Chilean capital and workers" supported any claim to sovereignty over those territories, a claim advanced more vigorously, it must be admitted, by the unofficial than by the official protagonists of Chile.

If the war was not one of conquest, it yet remains true that for the thirty or forty million pesos which it has been estimated to have cost Chile, Chile secured the entire Bolivian littoral and the Peruvian province of Tarapacá, together with the temporary and still unrelinquished administration of Tacna and Arica. The territories she secured were among the most valuable nitrate fields known. It appears that Chile more than supported her entire war expenses from the proceeds of the occupied Bolivian and Peruvian territory. What she has secured since would seem then to be clear gain and it has been estimated that from the province of Tarapacá alone one hundred and fifty million pounds sterling in nitrate wealth has already been extracted. In addition to nitrate, the territory conquered contains guano, copper, silver and tin, and deposits of salt and borax. In 1905, for example, the region exported 1,754,972 tons of nitrate. (See Perez Canto, *Economic and Social Progress of the Republic of Chile*, Santiago, 1906, pp. 36, 100 and *seq.*

See also the statistical and financial studies of Madueño, cited above; of Alejandro Garland, *Política Externa del Perú. Confidencial. El Problema de Tacna y Arica, Lima*, 1900, 23 pp., quoted in part in Maurtua, *op. cit.*, p. 155 *et seq*; and of Guillermo Billinghurst, one of the recognized authorities in the nitrate industry. Extracts from the writings of various observers and students of this subject are quoted by Maurtua, *op. cit.*, 153 *et seq.*) Whatever the Chilean opinion may have been, it seems that foreign observers generally considered the war one of conquest. Secretary Blaine's views and those of writers like Sir Clements R. Markham and J. Perkins Shanks have already been noted. Mr. Hurlbut, American Minister at Lima, in his dispatch of October 4, 1881, to the Department of State observed:

> "In looking back over the whole history of events, prior to hostilities and since, I can have no doubt but that the purpose, end, and aim of the war, declared by Chile against Peru and Bolivia, was in the beginning and is now the forcible acquisition of the nitrate and guano territory, both of Bolivia and Peru." (Foreign Relations, 1881, p. 937.)

The fact can hardly be disputed that Chile conducted, with very small loss of life, a financially profitable war, the proceeds of which have already yielded to Chile many times its cost. The natural resources Chile acquired constitute the economic and fiscal backbone of the country and have developed Chile from a poor into a rich country, the duties on the exports of nitrate now paying most of her budget expenses. In considering the character of the war of the Pacific it is difficult to escape the conclusion that the annexation of territories containing almost inexhaustible quantities of valuable natural resources can not be reconciled with a disclaimer of conquest.

Nor is there any doubt that the effect of the Treaty provision for a plebiscite in Tacna and Arica was clearly understood in Chile. If any further evidence were needed that Chile knew that the successful outcome of the plebiscite was a condition precedent to the inception of her sovereignty, and that her title in the occupied provinces was one of temporary possession only, it is furnished by the remarks of Señor Luis Aldunate, Minister of Foreign Affairs, to the Chilean Congress which considered the ratification of the Treaty of Ancon (Appendix, Exhibit 46). He says among other matters:

> "Our repeated efforts in this direction [of an outright sale of the territory] were invariably wrecked upon the mistaken impression that an immediate and absolute sale, however beneficial it might really prove for Peruvian interests, would in the end, appear to be a disguised form of annexation and above all, as an unjustified and unacceptable divergence from the various peace terms proposed by Chile from the time of the Arica conferences to that of the Protocol of Viña del Mar. . . It will certainly not escape the enlightened attention of Congress nor could it fail to strike even the most superficial examination, that the method selected to solve the difficulty has the disadvantage of keeping in suspense, for a relatively long period, the settlement of the nationality or final sovereignty of the territorial region in question. . . .
>
> "And indeed, it could not be said that the undefined status of Tacna and Arica during ten years would be injurious for Chile, since these territories are to be organized and brought under the authority of our national institutions and made amenable to our constitutional and legal systems. It might be that this same transitory condition, brought about in the region under consideration by the treaty of the 20th of October, will, under apparently unfavorable circumstances, secure the gradual, undisturbed and voluntary fusion of all

the various elements which, at the present time, might have been able to disturb our peaceful authority over those territories. Therefore, if the result of the plebiscite should be favorable to us, if the development of public interests during ten years, favored by our laws, our industry and our investments, an expansion due to the protecting influence of peace and labor and secured through our vigorous political organization; if all these factors, I repeat, should incline the inhabitants of the region of Tacna and Arica to adopt Chilean nationality. . . . the assimilation of our new citizens will have been already accomplished, under no compulsion and undisturbed, requiring nothing further than a slight alteration in the geographical map of Chile. Yet more, on the same hypothesis, Chile would reap the advantage of receiving, from the natural revenue of the region in question, an equal if not greater amount than that which she would have to pay as the price for this additional territory.

"But if these expectations, which are only mentioned as probabilities, should not be realized; if the plebiscite should give back the territorial region of Tacna and Arica once more to Peru, it would behoove Chile's loyal and honorable policy to respect the verdict of those peoples, confining herself to the receipt of the pecuniary compensation of ten million pesos which, added to the revenue which we would already have obtained through our occupation of those territories in ten years, would exceed, without a doubt, the amount we had demanded in this same connection in the conditions proposed in 1880 and 1882."

It is unfortunate that the successors of Señor Aldunate did not take the same view of "Chile's loyal and honorable policy to respect the verdict of those peoples," for it appears to have been the policy of the successors of Señor Aldunate to avoid any timely or loyal execution of the plebiscite which, as they well knew, owing to the overwhelming preponderance of Peruvians in what was

essentially Peruvian territory, would have resulted favorably to Peru. That undoubtedly is the one and only reason why Chile refused to permit the conclusion of any protocol looking to a timely holding of the plebiscite.

That Señor Aldunate was well aware of the temporary nature of Chile's possession is further evidenced by the negotiations which took place in December, 1883, between the plenipotentiaries of Bolivia and Chile for the conclusion of peace between those countries. Bolivia having been compelled to surrender her littoral, sought compensation by obtaining from Chile a zone giving Bolivia access to the sea through the territories of Tacna and Arica. Señor Aldunate's views, as announced at the time, are embodied in his book on the Treaties of 1883 and 1884 (Appendix, Exhibit 48), in which, on rejecting the Bolivian suggestion, he states: "The representatives of Bolivia know only too well that according to the clauses of the treaty signed with Peru on the 20th of last October, the final sovereignty of the territories of Tacna and Arica depends on a plebiscite or popular vote which is to take place within the term of ten years counting from the date of the ratification of that agreement. If Chile, therefore, has not herself obtained possession of those territories, but solely the expectation thereof, subject to the terms and conditions to which reference has been made, it is evident that she could not transfer to Bolivia a title which she herself in absolutely no way possesses."

There can hardly, therefore, be any doubt as to the exact nature of the temporary relation of Chile to the occupied provinces of Tacna and Arica and that the inception of Chilean sovereignty depended upon the successful outcome for her of a plebiscite to be held in March, 1894, by the inhabitants of the territory at that time.

IV

The Questions of Tarata and Chilcaya

Article 5 of the Supplementary Act of July 20, 1922, under which the present arbitration is held, provides:

> "It is agreed that pending claims to Tarata and Chilcaya are also included within the arbitration in accordance with the final disposition of the territory referred to in Article 3 of said Treaty."

It will be recalled that Article 3 of the Treaty of Ancon stipulates that the provinces of Tacna and Arica were to be occupied by Chile for a term of ten years. These two provinces together with the province of Tarata constituted prior to the war, the Peruvian Department of Tacna. The Peruvian law of June 25, 1875, had organized the Department, with an area of 32,600 square kilometers containing 35,986 inhabitants. The province of Tarata which lies north of the River Sama, the northernmost point of the Chilean occupation of Tacna and Arica, under Article 3, had according to the census of 1876, 7,723 inhabitants and an area of 4,978 square kilometers.

When the time came for the evacuation by the Chilean forces of Peruvian territory, they declined to evacuate the province of Tarata though it lay north of the River Sama, under the pretense that it was included in the province of Tacna, one of the three provinces of the department of Tacna. On January 9, 1884, the Chilean commandant in occupation of Tarata issued a decree joining Tarata to the province of Tacna and on October 31, 1884 (Appendix, Exhibit 52) a Chilean law for the administration of the territories of Tacna and Arica included therein the province of Tarata. Several years later a new Chilean law created Tarata as a district of the province of Tacna.

Peru in 1884, 1885, 1886 and 1887 (Appendix, Exhibits 53, 54, 55, 56) and on numerous occasions since, protested vigorously against this unjustified usurpation and extension of the occupation. The Chilean government, however, paid about the same attention to these justifiable protests against the peculiarly petty extension of the Chilean occupation as they have to the other demands of Peru for the prompt and loyal execution of the Treaty of Ancon. They have occasionally pretended that the River Sama, the boundary of their northernmost occupation, was in fact the River Tarata and that, therefore, Tarata fell south of what they professed to be the River Sama. A simple reference to the well known geography of the territory will disclose the facts and indicate that Tarata lies north of the River Sama and not south. Chile's obstinate refusal to concede the Peruvian demand will be the more surprising to the impartial observer in the light of the communication of Dr. Logan, United States Minister to Chile to Señor Aldunate, Chilean Minister of Foreign Affairs, reported by Dr. Logan in a dispatch to Secretary Frelinghuysen, November 1, 1883, as follows:

> "Having received a communication from my colleague in Lima informing me that difficulties had arisen between Iglesias and the Chilean Government upon the inclusion of Tarata in the territory of Tacna and Arica, I thought it my duty to see the Foreign Minister, Señor Aldunate, who has just returned from his visit to Peru, and learn the precise status of the case. To my relief this gentleman informed me that my colleague was wholly mistaken as to the facts; that a slight difference of opinion had arisen upon a question of construction, and that after being discussed with the Iglesias representatives for a couple of hours, Chile had receded and confined the boundary to the line originally proposed by

me during negotiations with Señor Calderon, viz., the Sama River. The parties are in perfect accord." (Appendix, Exhibit 51.)

How Chile can, in the face of this admission and undertaking, insist upon continuing to occupy Tarata, will be difficult to understand by those unacquainted with Chilean policy on the question in issue. Incidentally, it may be said that the Chileans have admitted that at a date subsequent to 1896, "there was not a single Chilean in Tarata" (Blanlot Holley in *Revista Chilena*, 1917, p. 122).

With respect to Chilcaya, a somewhat different question arose. That district, which had always been a part of the province of Arica and therefore within the territory temporarily to be occupied, was incorporated by Chile by an administrative decree of 1904, into the province of Tarapacá, which was permanently ceded to Chile by the Treaty of Peace. (Appendix, Exhibit 45.) The decree appears to have been induced by the conflicting claims of two groups of persons of Chilean origin interested in securing title to the borax deposits lying in the district of Chilcaya, one applying to the judicial authorities of Arica and the other to those of Pisagua, a district of Tarapacá.

The government of Chile by a decree of May 4, 1904 (Appendix Exhibit 57), altered the boundaries of Arica and Tarapacá as specified in the Treaty of Ancon, without consulting Peru, although the municipal decree of Chile involved a change in an international boundary and took from a territory in which the Chilean control was merely temporary an important district, annexing it to territory of which she had by the Treaty obtained permanent control.

The Peruvian government formally protested against this Chilean measure in its note of July 16, 1904 (Appendix Exhibit 58). Inasmuch as Chilcaya had

always belonged to the province of Arica, it will be apparent that its disposition is involved in the disposition of the territory of Tacna and Arica and the solution of the Chilcaya question has been made incidental to the solution of the larger question of Tacna and Arica. The government of Peru has never receded from its protests against the irregularity of the Chilean decree of 1904 and maintains its protest now.

V

The Negotiations for the Plebiscite

The negotiations for the plebiscite contemplated in Article 3 of the Treaty of Ancon have extended over a period of twenty-five years and the plebiscite has not been held. Chile still controls the territory and has opposed in numerous and devious ways every advance of Peru to have the plebiscite held on reasonable terms designed to ascertain by an honest vote the wishes of the people of Tacna and Arica. It is important to examine the history of these negotiations for the holding of the plebiscite, not only because of its bearing on the equities of the case and the conclusions to be reached by the Honorable Arbitrator, but also because the Honorable Arbitrator will be asked to determine who in fact is responsible for the plebiscite's not having been held. Upon the determination of that operative fact depends an important legal conclusion, namely, the effect of the prevention, by a prospective beneficiary or loser, of the performance of the condition upon which depends the benefit or loss he might obtain from such performance.

Before taking up the detailed account of a long series of diplomatic negotiations, marked by all the undisclosed and hidden motives which characterize the vicissitudes of diplomacy, it may be proper to say that Chile's attitude towards making arrangements

for the holding of the plebiscite has been passive, whereas that of Peru has been active. Chile's willingness to entertain proposals has varied somewhat according to the status of her international relations with Argentina and Bolivia. The prospect of difficulties with those countries, especially with the former, as in 1898, has inclined her from time to time to agree to some of the various proposals for the plebiscite; whereas a lessening in the tension with Argentina or Bolivia has been reflected in a marked reluctance to hold the plebiscite.

Señor Gonzalo Bulnes, a leading historian and diplomat of Chile, in an article in the newspaper *El Ferrocarril* of Santiago, said, some years ago (1901):

> "Peru has had great interest that the plebiscite should be carried out; to deny it would place us in a bad light, because her government can easily prove the contrary by exhibiting all the diplomatic correspondence on the subject. The reasons for this interest are very clear and can be stated briefly as follows:
>
> *First:* Chile was in possession of the territory in dispute, and the only available means that Peru had for its recuperation (recovery) was in urging Chile to comply with the conditions stipulated by the treaty. Therefore, the natural role of Peru during these negotiations was an *active* one, whereas that of Chile was a *passive* one.
>
> *Second:* Peru has been hearing the clamor of the inhabitants of the said provinces beseeching their reincorporation with their ancient nationality, and through patriotism and even for the sake of decorum, she could not unheed their voice.
>
> *Third:* Peru has had a blind confidence in the ultimate result of the plebiscite."

Rafael Egaña, one of the most zealous of Chile's advocates, in explaining the passive attitude of Chile toward holding the plebiscite, says:

"It would be absurd to state that Peru has not had *wishes* to realize the plebiscite at the proper time; but we may affirm that she is responsible for not having placed herself in a position to be *able* to realize it.

"On the other hand it is natural that Chile has felt no urgency in the matter, being in possession of the disputed territory; but while not urging on a conclusion, no steps have been taken to cause delay." (*Op. cit.*, p. 78.)

This is a reluctant admission and incomplete, it is believed, as to the real attitude of the two countries toward the plebiscite.

On another occasion, Gonzalo Bulnes, the Chilean historian, has said:

"The aims of Peru have never undergone any change and her most earnest desire has been to recover her provinces after securing the taking of the plebiscite under the auspices of some foreign power, and doing her best to obtain every facility for the payment of the ransom. Chile, on the other hand, one day wished the plebiscite to be favorable to herself, the next to make Bolivia a present of the territories, lastly, to hand them over to Peru; her action has in consequence been weak and she has made declarations and established principles that are contradictory as well as dangerous." (Maurtua, *op. cit.*, 172.)

The willingness to hand the territories over to Peru must have been expressed privately in Santiago, for knowledge of such willingness, which after 1894, would have constituted a correct liquidation of the controversy, has never come to Lima.

Anselmo Blanlot Holley, who as one of the administrators of the Chilean policy of "Chilenization" is well acquainted with the attitude of Chile toward the plebiscite, says, in his book "Conferencia Internacional," page 3:

"Peru has exhausted her arguments, accusing Chile of violating an international treaty; the circulars of her Chancery, the declarations of her press; the remonstrances of the partisans of her cause have incessantly importuned the neutral countries to compel her adversary to accept her proposals for a settlement or agree to obligatory arbitration.

"Chile has remained mute to all this clamor. She has always believed, and still does, that the Treaty of Ancon which ended the war, delivered the territories of Tacna and Arica over to her."

With this rationalization of Chile's desire and intention to hold Tacna and Arica in disregard of the provisions for a plebiscite we shall later have occasion to deal.

In 1900, nearly seven years after the lapse of the period when the plebiscite should have been held, the Chilean Legation at Washington distributed a circular of the Chilean Minister of Foreign Affairs, as well as the book of Egaña, with the view of influencing public opinion in the United States in Chile's favor. That the attempt was not altogether happy, may be gathered from editorials in the *Boston Journal* and the *New York Sun*. The *Journal* said:

"Chile has made formal communication to the Powers of her position in the matter of the disputed provinces of Tacna and Arica. In her statement of the events leading up to the present trouble, she throws upon Peru and Bolivia all responsibility for the delays in the negotiations and charges them with bad faith.

"These charges cannot be seriously made. The fact is that Chile is in possession of the provinces in question; that she has retained possession of them for years after the date at which, under the treaty of Ancon, she had agreed to allow their possession to be determined by a plebiscitum; and that today the only obstacle to the taking of this

vote is the flat refusal of Chile to permit it. This refusal Chile reaffirms in the very statement in which she charges Peru and Bolivia with occasioning the delay. She says:

" 'Without great danger to our national life we cannot give up possession of Tacna and Arica. Chile has an equal right there with Peru to obtain definite possession of the territories. The treaty of Ancon placed the two countries in an equality of position; but Chile has a greater interest than Peru in obtaining them and can offer them a future of prosperity and progress, while Peru neither wishes to nor is able to do more than return them to a state of neglect and inertia in which they always were in her possession.

" 'Finally the inevitable and supreme law of self-preservation in this case impels Chile and does not affect Peru.'

"This simply places the convenience and self-interest of Chile above the obligations imposed on her by the treaty of Ancon. It is a cynical disavowal of responsibility under that treaty. If it is true that her rule over the provinces is more beneficent than that of Peru, and that it is for the interest of the people of the provinces that they should remain as they are, the seventeen years during which Chile has held the provinces should have been enough to impress that fact upon the people. Why does Chile refuse them the chance which the treaty of Ancon guaranteed them, to declare their preference? "

And the *Sun*, of New York, said:

"We have before us a pamphlet written by Señor Don Rafael Egaña, and published at Santiago de Chile, the purpose of which is to justify Chile's failure to carry out the provisions of the Treaty of Ancon relating to the provinces of Tacna and Arica. The document is a disingenuous piece of special pleading, and leaves us entirely convinced that the Santiago Government is guilty of a glaring breach of faith in refusing to ratify the

protocol under the terms of which the treaty was to be carried out."

Señor Agustin Ross, a leading financier and former Senator of Chile, in a recent work, says:

> "The period of ten years for having recourse to the plebiscite stipulated for expired in 1893 (March 28, 1894), twenty five years ago, and that event has not yet taken place.
>
> "Why? We can conscientiously affirm that it has not taken place because Chile prevented it by opposing all sorts of difficulties and dilatory expedients." (Ross, *Tacna y Arica*, La Paz, 1918, p. 7; English Translation, *The Question of the Pacific*.)

In support of these conclusions of Chilean publicists, it will be proper to recount the main datum posts of the fluctuating negotiations. Before taking up the proposals for a plebiscite, it is proper to recur to the attempt of Chile to obtain the permanent possession of the captive provinces in 1888 and 1889 by paying to Peru's creditors a sum of 14,000,000 pesos in exchange for the sovereignty of Tacna and Arica. Peru had been left by the war in a distressing financial condition. Not only had her debt been greatly increased, but her principal asset, the nitrate fields of Tarapacá had been taken from her. Some of the foreign debt was pledged upon the Tarapacá nitrate and the foreign creditors naturally sought to hold the new sovereign, Chile, to the liens attaching to the property acquired. Chile, however, invoking a rule of international law, successfully maintained her contention that the Peruvian debt thus pledged was a general and not a local debt and that Chile had acquired her new territory free from former liens. Secretary Frelinghuysen, for the American creditors, ultimately acquiesced in this view. This made the Peruvian situation even more difficult. Articles 4 and 6 of the Treaty of Peace had provided

for the sale of guano if discovered in certain portions of the territory acquired by Chile, to satisfy the claims of the Peruvian creditors and assure their assent to the proposed annexation of portions of Peruvian territory. Chile had in 1882 enacted a law providing for the sale of a million tons of guano in the occupied territory, the proceeds to be divided between Peruvian creditors having liens and the Chilean government. Peru had unsuccessfully protested to foreign governments against this arrangement, but it was perforce ratified by the Treaty of Peace of 1883.

In 1888 and 1889, the Chilean government sought to interest the British government in a deal by which Chile was to pay directly to British creditors of Peru an amount up to ten million pesos for the account of Peru, taking in exchange the sovereignty of Tacna and Arica. The British Foreign Office did not accept, assuring the Peruvian government that "nothing would be done which could affect its interests."

The same suggestion was made by Chile to the French government, which had protested that the interests of its creditor citizens were jeopardized by some of the provisions of the Treaty of Ancon. A protocol was actually signed by the French Minister at Santiago and the Chilean Minister of Foreign Affairs, containing the unusual declaration that:

> "Chile reiterates the offer made to the French government on divers occasions . . . viz . . . . that it would increase by four million pesos, the indemnity which according to Article 3 of the Treaty of October 20, 1883, Peru would receive from Chile, in case the territories of Tacna and Arica remained definitively incorporated in the territory and under the sovereignty of Chile." (Appendix, Exhibit 125.)

Peru had in 1889 and 1890 made an arrangement with her creditors by which they received in satisfac-

tion of or as security for their claims, numerous public works, concessions and other guaranties. By a protocol of January 8, 1890, Peru agreed with Chile to make direct arrangements with her creditors for the disposal of the 50 per cent of the proceeds of guano taken over by the Chilean government since 1882. The payment of these funds turned over to Peru and by her immediately deposited in England for the benefit of Peruvian creditors, terminated Chile's immediate liability for the debts of Peru.

An alleged suggestion by the French Minister at Santiago to the Chilean Minister of Foreign Affairs for the liquidation of the claims of French creditors against Peru induced the Chilean Minister of Foreign Affairs to propose on April 12, 1890 (Appendix, Exhibit 59) that Chile would be willing, in order to, as the Minister asserted, "assist in delivering a neighboring and friendly nation from financial difficulties which hindered its development," to increase to 14 million pesos, the amount which Chile would have had to pay Peru in the event that Tacna and Arica became, according to Article 3, definitely incorporated with Chile, the offer, of course, being conditional upon the immediate transfer to Chile of the sovereignty of these provinces. The suggestion thus to obtain the definite cession of Tacna and Arica was peremptorily rejected by the Peruvian Minister of Foreign Affairs (Appendix, Exhibit 60). The Peruvian Government also protested against the declarations of a subsequent Franco-Chilean protocol, embodying a similar plan (Appendix, Exhibit 125). The Peruvian Legation at Santiago, stated that this unusual stipulation implied in form an attempted violation of the Treaty of Ancon and that it was highly objectionable in that it seemed to tend to obtain the support of the French Government to bring about this violation of a solemn obligation.

(See note from Peruvian Legation to Chilean Minister of Foreign Affairs, April 17, 1892, *Colección de los Tratados del Perú*, R. Aranda, Vol. 4, p. 726.)

In 1892, Chile admitted Peruvian liability for the French claim of Dreyfus Frères, which Peru was still engaged in discussing with the French Government; and in the course of an agreement looking to the settlement of French claims against Chile, Chile undertook to credit Peru with 14 million pesos in return for Tacna and Arica—the 14 million, however, to be paid not to Peru but to the French creditors of Peru. (Appendix, Exhibit 125). This agreement, which undertook to use the French claims as a lever for obtaining definite sovereignty over Tacna and Arica, aroused great indignation in Peru. The plan was not carried out. Nevertheless, it indicates the Chilean policy, as early as 1888, to obtain sovereignty over Tacna and Arica, while evading the plebiscite provided for in Article 3 of the Treaty of Ancon.

No step for initiating the agreement as to the protocol for the plebiscite provided for in the Treaty of Ancon, appears to have been taken before August, 1892. While Rafael Egaña states (*op. cit.*, page 83) that an instruction on the subject was given by the Chilean Minister of Foreign Affairs to Señor Vial Solar, Chilean Minister at Lima on June 22, 1892, the latter is said to have deemed it inopportune to open the subject. At all events, the first intergovernmental communication on the matter appears in the form of a note from the Peruvian Minister of Foreign Affairs, Señor Larrabure y Unanue to Señor Vial Solar on August 10, 1892, inviting him to enter into a discussion of the protocol for determining the plebiscite. (Appendix, Exhibit 61.) The Chilean Minister advised that he would transmit the suggestion to his government (Appendix, Exhibit 62). The Peruvian proposal was that a comprehen-

sive commercial treaty should be entered into between the two countries, part of which was to provide for the withdrawal of Chile from Tacna and Arica; and Chile was to receive free entry into Peru for Chilean goods (Appendix, Exhibit 63). Vial Solar stated that he would communicate the proposal to his government. Not until April 8, 1893, seven months later, did the Chilean Minister reply (Appendix, Exhibit 64), after a further reminder from the Peruvian Minister of Foreign Affairs (Appendix, Exhibit 65). In his reply, Vial Solar rejected the Peruvian proposal and stated his government's unwillingness to join commercial questions with those involving Tacna and Arica. The negotiation thereupon terminated.

The next Peruvian effort to conclude the protocol for the plebiscite took place in 1893. Don José Mariano Jimenez, the Peruvian Minister of Foreign Affairs, proposed to the Chilean Minister at Lima, Vial Solar, the withdrawal by Chile from Tacna and Arica on March 28, 1894, the expiration of the ten year period, adding that the plebiscite should be held either by Peru or by a neutral power to be agreed upon, which was to deliver the territories to the nation obtaining the majority in the voting. This proposal for a neutral control of the plebiscite was unacceptable to the Chilean Government, that government maintaining, through its Minister, the Chilean right to occupy the territories in question both before and after the plebiscite, until the complete accomplishment by Peru of all the stipulations which Article 3 of the Treaty placed upon that Government.

It became apparent at an early stage of the negotiations that the control of the voting was deemed by both parties a vital factor. Peru was willing to leave this to a neutral power, conditioned on Chile's withdrawal. Chile would not consent to any

arrangement permitting any other than a Chilean control of the voting or requiring a withdrawal before the complete performance of what she asserted were the Peruvian obligations under the treaty. The Peruvian Minister of Foreign Affairs persisted in his initiative (Appendix, Exhibit 66). In spite of the inability to agree on the qualifications of the voters, the Peruvian Minister transmitted to the Chilean plenipotentiary a memorandum, August 19, 1893 (Appendix, Exhibit 66), providing for a division of the territory into two zones, Peru to conduct the voting in the northern zone, Chile in the southern. The payments were to be effected by a concession of a free market to Chilean products in Peru for a period of 25 years; should the result be favorable to Peru only in one zone, proportionate compensation would be made by restricting the free customs entry to 20 years. This proposal was enthusiastically received by Señor Vial Solar, the Chilean Minister and he has recorded his views thereon in the following language:

> ". . . Chile thus secured, first, the definite sovereignty of a considerable portion of the territory in dispute, which, in the opinion of men obsessed by dreams of gold and nitrates, might possibly contain, beneath the sands of the inscrutable desert, untold mineral wealth; secondly, she acquired the commercial supremacy in the Pacific, a point unfortunately overlooked in the Treaty of Ancon, as has been often stated and reiterated, and which would enable her, free and unfettered, to develop her mercantile influence, not only along the Peruvian coast, but following it up by means of well-established trading stations, tap the whole west coast of South America." . . .
>
> "Now, in exchange for such vast and tangible assets, what did Chile surrender to the other side, by the already mentioned proposal of agreement? What did she forego from a strictly legal point of

> view or from that of studied convenience? Solely the provinces of Tacna and Arica, stripped by cold statistical facts of the rosy veil in which they had been conveniently shrouded and so held up to the eyes of the nation, decked as for the sacrifice of peace, though now that the mirage was dispelled, they appeared useless even as a military outpost for the province of Tarapacá, steadfastly clinging, meanwhile, to their Peruvian nationality, notwithstanding all the strenuous, but hopeless, efforts made to give them at least the outward semblance of Chilean provinces." (Vial Solar, *Páginas Diplomáticas*, Santiago, 1900, pp. 193, 195.)

Although Señor Vial Solar's assumption that Chilean control of the voting in the southern zone was equivalent to a surrender of the territory to Chile, is hardly sustainable, nor was it acquiesced in by Peru, the Chilean government declined the proposal, a fact which was communicated to the Peruvian government on September 26, 1893, by Señor Vial Solar (Appendix, Exhibit 66). In a final conference, however, the Chilean envoy declared that the demand for the preliminary evacuation of the zone from Sama to Vitor rendered impossible the continuation of the negotiations because the power reserved to Peru to make the regulations for the plebiscite would manifestly assure the reincorporation of the territories in controversy to the detriment of the expectations of Chile.

This declaration indicates the Chilean conception that the administrative authority conducting the plebiscite would constitute the controlling factor in determining the result of the plebiscite. The Peruvian Minister argued in vain that Chile would enjoy the same power in the zone from Vitor to Camarones. The manifest insistence of Chile on conducting the plebiscite herself and alone and the Chilean view of the effect on the result of

the administrative control of the voting indicates both the Chilean position throughout most of the negotiations and the dangers to Peru involved in a concession of the Chilean demand. Not only is such a demand most unfair, inasmuch as Chile was a mere occupant and Peru the sovereign, but it indicates a desire not to obtain a natural and unobstructed expression of the views of the inhabitants, as Minister Luis Aldunate had in 1883 professed, but a desire artificially to influence the vote so as to insure an unnatural Chilean verdict. This policy is more definitely evidenced in the subsequent policy of Chilenization and in the Chilean position during subsequent negotiations.

On December 7, 1893, the Peruvian Minister of Foreign Affairs reopened the negotiations, proposing to submit to arbitration the whole question or the particular question which was looming large as a point of conflict, namely, 1: To which of the two countries will the possession of Tacna and Arica revert after March 28, 1894, the date of expiration of the period of occupation fixed by the Treaty of Ancon; 2nd, Shall the right to vote in the plebiscite be accorded only to the individuals whose nationality would be affected by the definitive incorporation of the territory with Chile, or shall it extend to all the inhabitants? Chile had in the *pourparlers* insisted on all the inhabitants voting; Peru, on natives only. The Chilean envoy declared this method of solution unacceptable, but the Peruvian negotiator, who thus found all doors closed to him, observed that Peru ought at least to obtain the assurance that the plebiscite would be the free and spontaneous expression of the wishes of the voting population. The Chilean envoy thereupon consented to the drawing up on January 26, 1894, of an extended protocol, including provisions for voting by zones, a rectification of frontiers, the payment to be effected in

bonds. (Appendix, Exhibit 67.) The further negotiations were then transferred to Santiago, between the Chilean Minister of Foreign Affairs and the Peruvian Envoy, Ramon Ribeyro. A fairly complete memorandum for a protocol was submitted by Mr. Ribeyro on February 23, 1894 (Appendix, Exhibit 68), providing for mixed commissions to control the voting, the qualified voters to be resident Peruvians or Chileans over 21, including Chileans who had resided in the provinces over two years, payments to be effected in bonds, but in return an agreed advance of frontiers to be permitted to the losing nation, the winning nation to reduce its payments to three millions. The Chilean Minister of Foreign Affairs promised to study the memorandum and reply to it, but shortly thereafter he expressed his inability to do so because of prospective early retirement from the cabinet.

March 28, 1894, was the date on which the plebiscite should have been held. On March 27, the day before, Señor Ribeyro, Peruvian Minister at Santiago, formally protested (Appendix, Exhibit 69) against the Chilean failure to cooperate in carrying out the agreement of January 26, 1894, and against the Chilean suggestion, which had been made, of prolonging the period of occupation beyond the stipulated time. Peru, he said, reserved all its rights but would nevertheless endeavor loyally to secure an honorable and practical means for reaching an agreement on the holding of the plebiscite.

On March 29, 1894, the Chilean Minister of Foreign Affairs, Blanco Viel, refused to accept responsibility for the failure to reach an agreement on the plebiscite, and put forward, for the first time, the contention that the Chilean occupation was lawful no matter how long it was postponed, so long as the conditions for the plebiscite remained unfulfilled. He begins from the premise that during the war the occupation was lawful

and that the treaty of 1883 merely fixed a time and conditions under which the occupation would terminate, and that until the performance of those conditions, Chilean occupation "must necessarily subsist" (Appendix, Exhibit 70). Under this interpretation, Chile's mere refusal to agree to any conditions for a plebiscite would not affect the lawfulness of the occupation, which might, therefore, continue indefinitely without the performance of the plebiscite and without incurring the responsibility of violating the treaty. The Chilean policy of holding the captive provinces in disregard of a plebiscite, was beginning to become apparent.

On July 5, 1894, Señor Ribeyro, Peruvian Minister at Santiago, took up with Señor Sanchez Fontecilla, the new Chilean Minister of Foreign Affairs, the negotiations for the conclusion of the agreement on the terms and conditions of regulating the prospective plebiscite contemplated in the Jimenez-Vial Solar agreement of January 26, 1894. Even Señor Ribeyro, who had been accustomed to being put off, was astonished at the new turn given to the negotiations by the Chilean Minister of Foreign Affairs. The latter not only proposed an extension of the occupation until 1898 (Appendix, Exhibit 71), a proposal which Peru declined on the ground that a prompt settlement was essential, but also added that the entire Jimenez-Vial Solar Protocol would have to be disregarded inasmuch as the Chilean Government had not approved that Protocol, because Señor Vial Solar "had not carried out the instructions which had been furnished him" in its negotiation. The proposals above mentioned are reported by Señor Ribeyro to the Peruvian Minister of Foreign Affairs in a dispatch of July 6, 1894 (Appendix, Exhibit 71), as evidence that the Chilean Minister of Foreign Affairs merely sought an excuse for setting aside the Jimenez-Vial Solar Protocol, which had offered

the first hopeful step toward the execution of Article 3 of the Treaty. As to whether the Chilean Government had approved the Protocol, it is proper to cite the Memoirs of the Chilean negotiator, Señor Vial Solar, in his book *Páginas Diplomáticas* (Appendix, Exhibit 72) where he says:

> "The Chilean Foreign Office, far from disavowing its Representative in Lima at the time and repudiating the negotiation so successfully carried out by him, on the contrary, ratified everything he had accomplished."
>
> * * * * * * *
>
> "Otherwise, and supposing the rumors which were circulated, at the time, on this subject by the press to have been true, how could it have been possible not to have notified the Peruvian Government respecting all these matters, as would have been required so as to give them any diplomatic value, and instead to have kept it in complete ignorance of what had taken place?"

On September 21, 1894, Señor Ribeyro, acting under new instructions to reopen the negotiations, again made the effort, which had previously been thought required only the arrangement of a few details to crown it with success, to bring about Chilean consent to the holding of the plebiscite. In his note to the Chilean Minister of Foreign Affairs (Appendix, Exhibit 73) he reviews the history of the previous negotiations and expresses the hope that the Chilean Minister of Foreign Affairs will express an opinion as to the basis on which the agreement for the plebiscite might be carried out. Señor Rafael Egaña, whose zealous partisanship in behalf of Chile has already been noted, states in his book: "For the first time our Government took the initiative which till then had been left to Peru, and on October 18, 1894, presented a short and practical project" in the form of a questionnaire, the

main fearure of which provided for a division into three zones, tne northern to go definitely to Peru, the southern to Chile, and in the middle zone a plebiscite to be held, the winning nation to pay four million pesos to the losers, with a renewed suggestion for the prolongation of the Chilean occupation until 1898. Shortly after the presentation of this proposal a ministerial crisis occurred in Chile and a civil war in Peru. The new Chilean Minister of Foreign Affairs, Señor Barros Borgoño, although promising Señor Ribeyro, the Peruvian Minister at Santiago, to take up the negotiations that had been initiated with his predecessor, and expressing his earnest desire to bring them to a successful conclusion, nevertheless transferred the negotiation anew to Lima, designating for this purpose as the Chilean plenipotentiary, Maximo Lira.

Lira did not take up the question at the point where it had been left. Overlooking the preceding steps in the negotiation he proposed the annexation of the Peruvian provinces of Tacna and Arica by means of a direct arrangement excluding the plebiscite. (Meeting of August 9, 1895, Appendix, Exhibit 74.) The Peruvian Minister of Foreign Affairs declared that he could only deal with the provisions of the Treaty of Ancon for the organization of a plebiscite, and that the first thing to consider was the authority to be charged with the duty of conducting the plebiscite. It was then that, for the first time, the Chilean Government advanced the argument that before the plebiscite could be held, Peru would have to furnish guarantees for the payment of the ten millions which the winning country would have to pay to the loser. Lira suggested that this amount be paid within one month, later three months, after the holding of the plebiscite and that appropriate guaranties for its payment be furnished in advance. The Peruvian Minister of

Foreign Affairs called attention to the treaty provision as to "the terms and time for the payment of the ten millions," which were to be agreed upon. Failure to agree on the terms of payment afforded Chile another ground for avoiding the plebiscite, although at this time, as will presently be shown, Chile's motives were somewhat conflicting, due to the treaty which had just been concluded with Bolivia. The Peruvian Minister of Foreign Affairs proposed that the two countries renounce all indemnity, a proposal which was declined. He then undertook to make payment immediately after the holding of the plebiscite. The Chilean Minister then fell back upon the necessity of affording sufficient guaranties to assure the fulfillment of the promised payment. Various forms of guaranty of Peruvian revenues were then suggested pending the raising of a loan which would liquidate the whole amount at once, and as a special guaranty the Peruvian Minister of Foreign Affairs disposed adequately, it would seem, of the Chilean objection by offering to leave the provinces in the possession of Chile until the payment had been completely effected.

Had Chile desired to carry out the treaty by holding the plebiscite, and had she wished merely to be assured that she would not surrender the territory without payment of the indemnity due, it would seem that the pledge of the territories, together with other guaranties, was more than ample to assure Chile against a failure of the payment of the indemnity. Señor Vial Solar in his memoirs (Appendix, Exhibit 50) has expressed the common opinion that Peru would have had little difficulty in raising the money for the indemnity. Indeed, the conclusion cannot be escaped that the insistence upon guaranties was merely another of the many devices contrived by Chile with a view to avoiding the timely holding of the plebiscite. Inas-

much as Chile was willing, in the first negotiation of 1880 at Arica, to occupy Tacna, Arica and Moquegua as a guaranty for an obligation to pay twenty millions, until paid, it would not seem unreasonable, had there been a sincere disposition to hold the plebiscite, to expect that she might have been satisfied with the guaranty of a continued occupation of Tacna and Arica until ten millions were paid. The provisions for the plebiscite and for the payment are separable. They were not stipulated to be simultaneous events. Only the *withdrawal* from the provinces, in the case of Chile, or the vesting of their complete sovereignty in Chile, in the case of Peru, was to be simultaneous with payment or with agreement for payment. Chile at one time seemed willing to accept Peruvian bonds in payment, as already observed. It was perfectly possible to hold the plebiscite, as provided by Article 3, and retain the provinces if necessary, until payment was completely effected. This would have been more in accord both with the letter and the spirit of the treaty. The announced insistence, then, upon an arrangement for a prompt cash payment as a preliminary condition for fixing the terms of the plebiscite can only be regarded as a means for avoiding the plebiscite, a conclusion which is confirmed by the respective counter-proposals offered in the course of these particular negotiations. The conversations are recorded in a series of protocols printed in the Appendix as Exhibit 74.

In connection with these negotiations of 1895 it is important to recur to the diplomatic arrangements between Bolivia and Chile. Bolivia had concluded an armistice in 1884 under which the Bolivian littoral was ceded to Chile. In 1879 and again in 1882 Chile had made an attempt to separate Bolivia from Peru, offering Tacna and Arica to Bolivia in exchange for the

cession of the Bolivian littoral to Chile. The effort was renewed in 1883 in connection with the expressed Bolivian desire to obtain a port on the Pacific. It has already been noted (Appendix, Exhibit 48) that the Chilean Minister of Foreign Affairs, Luis Aldunate, declined to cede Tacna and Arica to Bolivia on the ground that the status of those territories had been left in a position in which Chile could convey no title thereto, inasmuch as the plebiscite might terminate Chilean control. Señor Aldunate stated that "the solution embodied in the compact of October 20, 1883, reserved to Peru the expectation of recovering these territories and Chile, which had engaged its word and its good faith in the most scrupulous execution of the said compact could not entertain even indirectly a solution which would dissipate at once the hopes upon which the vanquished country must count of recovering the possession of those regions."

On May 18, 1895, Barros Borgoño, the Chilean Minister of Foreign Affairs, signed a definite treaty of peace with Bolivia according to which Chile was to retain "the absolute and definitive possession of the Bolivian territory." At the same time another secret treaty was concluded which stipulated (1) that Chile was obliged to transfer to Bolivia the permanent sovereignty of the territories of Tacna and Arica which Chile would acquire as the result of the plebiscite stipulated in the Treaty of Ancon, or by direct negotiations; (2) that Chile and Bolivia make reciprocal promises to exert efforts separately or jointly to obtain the said territories in full ownership; (3) that in case Chile could not obtain them, it would transfer to Bolivia the zone of Vitor to Camarones, the southernmost part of Tacna. Two other protocols likewise signed between Bolivia and Chile on December 9, 1895, and April 30, 1896, provided (1) that the treaties of peace

and cession formed an indivisible whole; (2) that the definitive cession of the Bolivian littoral would remain without effect if Chile did not deliver to Bolivia within two years the promised port on the Pacific; and (3) that Chile confirmed its undertaking to make every effort to acquire Tacna and Arica and cede them to Bolivia or in default thereof the Cove of Vitor or some other analogous port. (Appendix, Exhibits 112, 113, 114.)

This series of treaties, of which Chile ultimately ratified only the principal one, ceding to her the Bolivian littoral, gave Bolivia a strong interest in effecting some arrangement by which Chile might obtain the provinces. The treaties, which left Bolivia in a state of hopeful suspense, were in fact concluded in large degree because war clouds were then appearing over the Andes, arising out of a bitter dispute between Argentina and Chile. Chile, fearing a rapprochement between Bolivia and Argentina, sought to satisfy Bolivian aspirations by the treaties above mentioned, and also became, as will presently appear, more ready to yield to Peruvian solicitations for the settlement of the Tacna-Arica question. The treaty with Bolivia, promising her Tacna-Arica, though it was left pending without ratification in the Chilean Congress until the necessity for ratification was deemed to have disappeared by the settlement of the Argentine question, had the effect of detaching Bolivia from the proposed alliance with Argentina, and gave Bolivia a definite interest in taking Tacna and Arica from Peru, as well as attaching Bolivia to the Chilean policy with respect to both Argentina and Peru.

The Peruvian Government protested vigorously against the immorality of the promise contained in the treaty of 1895 with Bolivia, accrediting Dr. Porras to Santiago to continue the now tiresome and dis-

couraging discussions for the accomplishment of the plebiscite. Dr. Porras protested anew against the Bolivian treaties and declared that the recent attitude of Chile, which refused to organize a plebiscite and required a guaranty in advance of the payment of the ten million pesos, seemed a mere pretext to evade the plebiscite and to bring about the illegitimate annexation promised in the treaties with Bolivia. The Chilean Minister of Foreign Affairs, Morla Vicuña, replied that there had been no promise made to Bolivia and that the treaties of 1895 could be considered as non-existent. He renewed the proposal for a division of the provinces into three zones, the northern to go to Peru, the southern to Chile, and in the central zone a plebiscite to be held. The Peruvian plenipotentiary replied that Peru was determined not to accept under any form a division of the territory (Appendix, Exhibit 75).

This was the condition of affairs in 1898 when the Chilean-Argentine controversy brought those countries to the verge of war. A strong current of opinion manifested itself then in Chile for an understanding with Peru, whose neutrality seemed even more essential than that of Bolivia. The Chilean Foreign Office gave indications that it was disposed to be reasonable in reaching an agreement, whereupon Peru accredited its vice-president, Guillermo Billinghurst, as plenipotentiary *ad hoc* and a new negotiation commenced.

The Chilean Minister of Foreign Affairs, Silva Cruz, proposed to pay for the annexation of Tacna and Arica a sum greater than that mentioned in the Treaty of Ancon, whereupon the Peruvian envoy declared that if Peru, vanquished and powerless, submitted in 1883 to a mutilating peace it would, in 1898, discuss only the reintegration of the provinces which had not been ceded and which ought to return to their natural state.

The Chilean Minister then proposed that Tacna return to Peru and Arica go to Chile. This was also refused. Finally the organization of the plebiscite was discussed. The Chilean Minister proposed that the vote be taken by dividing the territory into three zones. While going over much of the old ground of previous negotiations, the important advance was made in the protocol, which was ultimately signed on April 16, 1898, of agreeing to leave to the arbitral award of Spain the much disputed questions: first, who shall vote at the elections, including the question of nationality, sex, age, civil status, residence and other conditions; and second, should the vote be public or secret. The protocol in full is printed in the Appendix, Exhibit 76.

The agreement to submit these stubborn questions to arbitration marked a great step forward. This agreement, known as the Billinghurst-Latorre Protocol, was promptly ratified by the Peruvian Congress. Its conflict with the unratified Bolivian treaty of 1895 is apparent. Bolivia had promptly ratified that treaty but Chile postponed its ratification indefinitely. The same fate befell the Billinghurst-Latorre Protocol.

The change in Chilean policy was directly due to the change in the Argentine-Chilean situation. During the period when that situation was delicate, the Chilean Government urged ratification. A. Blanlot Holley, that most zealous of Chilenizers and defenders of Chile, states, in an article in the *Revista Chilena*, May, 1917, p. 123.

> "As the storm was brewing in the Andes, the vanquished nation of the Pacific sought the protection of her sister of the Plata. . It was due to the pressure of this danger, as is apparent by the date—April 16, 1898—that the Billinghurst-Latorre (Admiral Latorre) protocol was agreed upon.

After the tension was relaxed by a decision to submit

the Argentine question to arbitration, the Chileans showed a decided lack of interest in ratifying the protocol for the plebiscite. On April 27, 1898, while the situation was still tense, the Chilean President of the Council of Ministers stated: "This protocol is merely the honorable and sincere execution of the Treaty of Ancon." Although the Chilean cabinet urged ratification, the Chilean Congress refused its approval, being moved, as was alleged, by the consideration that the possible possession by Peru of some nitrate deposits would seriously impair the Chilean monopoly. When the Chilean Government submitted to Peru the fears expressed in Congress on this point the Peruvian Government, anxious to meet any reasonable objection, expressed its willingness, in the unlikely event of nitrate being discovered in Tacna or Arica, not to levy any export duties lower than those established by Chile. (Appendix, Exhibit 77.) Peru, at the solicitation of the Chilean cabinet, undertook to and actually did sign an agreement (Appendix, Exhibit 78) that should nitrate be discovered in the provinces, they would adopt the same export duty as that of Chile.

Early in September, 1898 the Argentine situation, becoming suddenly tense, the Chilean Congress approved the Protocol in a general way, though this did not have the effect of formal ratification. On that day, Premier Walker Martinez declared in the Chilean Congress:

> "International events render indispensable the approval of the Protocol to such an extent that anyone who would oppose it would figure as a traitor to his country."

On September 22, Argentina and Chile reached an agreement to submit their dispute to the King of England. Two days later the Chilean Chamber of Deputies adjourned the discussion of the ratification of the protocol with Peru.

On October 1, 1898, the Chilean Minister at Lima addressed a note to the Peruvian Foreign Office to the effect that if nitrate deposits should be discovered, Peru should abstain from working them so that the Chilean monopoly would not be interfered with. (Appendix, Exhibit 79.) The Chilean policy appeared to be returning to normalcy, namely, to evade the plebiscite. The Peruvian Minister of Foreign Affairs regarded the request not only as humiliating but as a new subterfuge for the repudiation of the protocol and an evasion of the plebiscite. He therefore declined, in a note of October 2, 1898, to entertain the uncalled-for demand of Chile, and demanded again the ratification of the Billinghurst-Latorre Protocol (Appendix, Exhibit 80). In spite of continued urgent requests by Peru, the sessions of the Chilean Congress in 1898 and 1899 closed without the ratification of the protocol. (Appendix, Exhibits 81 and 82.)

Free from the Argentine difficulty, the Chilean Government evidently decided to enter upon a new orientation of its policy. The new program consisted in repudiating the agreements with Peru and Bolivia, in Chilenizing the Peruvian provinces and in keeping them. If the popular vote were ever to take place it would be registered by a new population artificially introduced in order to maintain a Chilean majority. Up to that time the Peruvian population had been in Arica about 76 per cent, the balance consisting of foreigners, including Chileans; in Tacna, 72 per cent with 28 per cent foreigners; in Tarata, 94 per cent Peruvians with 6 per cent foreigners.

Chile now entered upon an active policy of closing Peruvian schools, suppressing Peruvian newspapers and forbidden Peruvians to act as teachers. The Chilean Government opened Chilean schools, importing instructors, and commenced the new work of Chilenizing by

importing Chileans; transferred to Tacna the Court of Appeals which had been in Iquique; increased greatly the military administration; deprived Peruvians of the right to assemble and to display the Peruvian flag; expelled Peruvian workmen in great numbers and substituted Chileans. Periodicals and newspapers were founded to carry on a propaganda for the assimilation of the territories to Chile. These were only the first steps in the policy of Chilenization. The execution of this arbitrary policy will be found more fully described in the Appendix, Exhibits 126 *et seq.*, and will be referred to again later in this Case. At the moment it suffices to call attention to the fact that the Peruvian Government earnestly protested against these measures, notably in the notes of July 10th and November 14, 1900 (Appendix, Exhibit 127), on the ground that the measures were manifestly designed to frustrate and falsify by artificial measures of coercion the free expression of opinion of the voters.

The new policy about to be undertaken and the fears that fraud would win the day induced certain last desperate efforts of the Peruvian Government to bring about a ratification of the Billinghurst-Latorre Protocol. On May 10, 1900, the Peruvian Minister at Santiago, Cesareo Chacaltana, conferred with the Chilean Minister of Foreign Affairs and reviewed the history of the negotiations prior to and since the conclusion of the protocol and implored the Chilean Minister to bring about its ratification by Congress. (Appendix, Exhibit 83.) On June 12, 1900, Minister Chacaltana again addressed the Chilean Minister of Foreign Affairs, reviewing the state of the negotiations up to that point, and impressed on him the necessity of presenting the protocol to the new Congress for its ratification. (Appendix, Exhibit 84.)

The Peruvian effort to obtain the ratification of the

Billinghurst-Latorre agreement was continued during the 1901 sessions of the Chilean legislature. After long discussion, which indicated the unwillingness of the majority to submit the questions above mentioned to the arbitration of Spain, the appropriate Committee of Congress referred the protocol back to the Executive, without approval, and with the request to initiate new proposals not calling for arbitration. (Appendix, Exhibit 85.)

The Peruvian Government manifested its grievous disappointment and disapproval of this outcome of the long effort to reach an agreement by withdrawing its diplomatic mission from Santiago. Minister Chacaltana, in a long note addressed to the Chilean Minister of Foreign Affairs, January 19, 1901 (Appendix, Exhibit 85), deplored the Chilean action rendering null the results of a negotiation of many years and thereby frustrating the execution of a solemn treaty, but also expressed the Peruvian suspicions and protests with respect to the new lines taken by the Chilean policy of expelling Peruvians from the disputed provinces by coercion and oppression and artificially introducing Chilean voters into the territories. The policy thus expressed in the note of Minister Chacaltana in 1901 reflects correctly the Peruvian views of the present day, the grounds therefor being further strengthened by a continuation for over twenty years of a ruthless policy of oppression and suppression against everything Peruvian in the territories of Tacna and Arica. In the note of 1901, Minister Chacaltana stated:

> "Since March 28, 1894, Chile occupies in fact without a sufficient title thereto the territories of Tacna and Arica by reason of which my government has denied the legality of that occupation. Even assuming that the occupation could be justified it would always be true that Chile has unduly and indefinitely retained a portion of the

province of Tarata which was not ceded to her either in perpetuity or temporarily; against which Peru has protested for the last seventeen years and protests now.

"The measures taken in respect to Tacna and Arica for the purpose of diverting in favor of Chile the current of their aspirations are considered by my government as in conflict with the Treaty of Ancon, for which reason they have requested and do now request their repeal.

"Whatever the procedure to be followed in the future by the Chilean government in respect to Article 3 of the said treaty, Peru is not ready and willing to go to the plebiscite under conditions which may imply an infringement of that treaty.

"Peru finally reserves to herself the right to refuse to enter into new negotiations in respect to the plebiscite until there is reestablished in Tacna and Arica, through the repeal of the measures adopted in respect to them, the legal situation existing on March 28, 1894."

In the report of the Chilean Minister of Foreign Affairs for 1901 a brief account is given of the alleged reasons for the failure of the Billinghurst-Latorre Protocol, but a strange paragraph is incorporated in that report which indicates the intention of Chile at all hazards to retain the territory in dispute. Though clothed in language having the appearance of fairness, it nevertheless undertakes to reflect what is called "the force of the national will, to do, within all legality and rectitude, everything possible to have the expectations granted to Chile in the said treaty immediately converted into a real and definite fact." (Appendix, Exhibit 86.) Chilean views of "legality" and "rectitude" may not always meet with unanimous approval, but there can hardly be any difference of opinion that "the advantages which in such cases are always in favor of the party in possession," which the Chilean Minister of Foreign Affairs refers to, cannot be conceded by those

who are desirous of having a free and untrammelled plebiscite held.

At the end of the circular of 1901 issued by the Peruvian Minister of Foreign Affairs, Osma, he offers to submit to the arbitration of any neutral power the questions and issues raised by the controversy over the plebiscite in Tacna and Arica. (Appendix, Exhibit 87.)

Peru's efforts were now directed to creating a sentiment favorable to the arbitration of the whole Tacna-Arica question. Peru heartily supported the effort of the Pan-American Congress of 1901 to commit itself to a resolution favoring obligatory arbitration of all American questions. Chile vigorously resisted such a resolution (Appendix, Exhibits 105 and 106), and threatened not to send delegates if such a resolution were placed in the program of the conference. Opposition to the submission to arbitration of a legal question necessarily, in the absence of countervailing circumstances, throws upon the country declining arbitration the burden of proving that its action is justified. That burden Chile has never met. Mr. Henry L. Stimson in a recent address has very convincingly said (New York *Times*, June 22, 1923): "There is no way of showing that you are right so effectively as your willingness to submit your cause to an impartial judge."

It was Peru's unremitting persistence in its demand that ultimately brought about the submission to arbitration of the question now before the Honorable Arbitrator for decision.

From 1902 on, much of the diplomatic correspondence of Peru with Chile is directed to protests against the policy of Chilenization and against other acts of sovereignty, such as the grant of permanent concessions, which a temporary occupant cannot make and which Peru has rightfully regarded as an impairment of her rights of sovereignty.

In the Treaty of 1904 with Bolivia, which was substituted for the Treaty of 1895, Chile uses Tacna and Arica as a boundary between Bolivia and Chile. The Treaty also provided for the construction of a railroad between Arica and LaPaz, going through what has never been anything but Peruvian territory. A supplementary protocol included provisions for the Customs Administration in Arica which were to come into force at the expiration of fifteen years.

The Peruvian Minister of Foreign Affairs, Javier Prado Ugarteche, in a note of February 18, 1905, protested against the Chilean measures in the following language:

> "A demarcation of boundaries, the construction and operation of railroads, concessions of free commercial traffic, obligations and concessions which affect the territories and rights of sovereignty in them are acts of sovereignty undertaken in the exercise of the full and absolute disposition of property and of the domain, which can be exercised under indisputable principles of international law, only by the owner and sovereign and not by the mere possessor and occupant, as Chile is in the territories of Tacna and Arica. For such concessions it was necessary to obtain the consent of Peru unless a plebiscite to which the treaty of Ancon binds Chile pronounces in Chile's favor. Neither of these contingencies having taken place, my government is obliged to declare that Peru neither acknowledges nor recognizes stipulations to which it is not a party and that consequently they are not binding upon Peru in any form or at any time, and that they cannot modify the legal status of the territories of Tacna and Arica of which Peru continues to be the owner and sovereign whereas Chile is only an occupant and holder whose legal title expired ten years ago at the time when the plebiscite stipulated in the Treaty of Ancon should have taken place."

It is an elementary principle of international law

that a military or temporary occupant or one whose tenure is contingent and therefore falls short of complete sovereignty, cannot legally alienate or grant permanent concessions in any portion of the public domain.

Mumford v. Wardwell (1867, U. S.), 6 Wall. 423, 425.

Coffee v. Groover (1887), 123 U. S. 1, 10.

Georgiana and *Lizzie Thompson* (U. S.) v. Peru, Dec. 20, 1862, Moore's Arbitrations, pp. 1595, 4785.

Borchard, Diplomatic Protection of Citizens Abroad (1915), pp. 208-209.

The Chilean Minister of Foreign Affairs, Luis A. Vergara, in his answer of March 15, 1905, advanced certain new arguments and contentions now for the first time enunciated by Chile, indicating a further progression in the attitude of regarding the plebiscite as perhaps a historical inadvertence of the past in no way binding on Chile or interfering with Chile's full sovereignty in Tacna and Arica. This remarkable evolution in Chilean conceptions is indicated by the statement of Minister Vergara that Peru had ceded to Chile in the Treaty of Ancon the full and absolute sovereignty of the provinces without restriction in so far as concerns its exercise, and limited merely as to duration by the eventuality of a plebiscite. The Chilean Minister added that international plebiscites had been provided for not really to consult the will of the people but to disguise their annexation. This was a new thought, but it is not without explanation, for it indicates the Chilean need for rationalizing the obstinate refusal to cooperate in the holding of the plebiscite, though it seems inconsistent with the professions and verbal acquiescence of the Chilean government from 1883 to 1905, not to speak of the express words of the treaty that a plebiscite was to determine

the ultimate sovereignty of Tacna and Arica. Minister Vergara, in the note above mentioned, refers to the Treaty of Vienna of October 11, 1871, between Austria and Prussia by virtue of which the stipulation for a plebiscite of the Danish people of Schleswig remained without effect because, he said, the Austrian government, taking events into account and not merely its desire or that of the Danish population, but yielding to the reality of things, recognized the annexation of that territory as an accomplished fact. One wonders whether such reasoning impressed its author as valid. He terminated the note by inviting Peru to conclude a new accord, an invitation which Peru at once accepted by again sending a Minister to Santiago.

Although Peru had become, with just cause, discouraged in her efforts to secure Chile's consent to any reasonable method for holding the plebiscite, she was unwilling to assume the responsibility, which Chile would doubtless gladly have tolerated, of dropping further negotiations. Although Chile had on several occasions asserted her entire willingness to carry out Article 3 of the Treaty of Ancon, her actions in this respect do not appear to square with her words, at least in so far as concerns any disposition to permit irreconcilable questions of methods of procedure to be submitted to arbitration. It was only on an inconclusive occasion in 1909 and 1910 and under the present arbitration in 1922 that the policy of Chilenization was apparently believed to have become sufficiently successful to persuade Chile to risk a plebiscite, but even then for the most part it was under conditions which completely nullified the "circumstances" of 1894 when the plebiscite should have been held. Down to 1922 Chile's professed willingness to hold the plebiscite has been associated with an insistence upon fixing its principal terms and this position Chile has

maintained because, as in the Vergara note, she claimed to be the sovereign of the territory. In this conclusion Chile appears to find herself aided by her interpretation of Article 3, namely, that in the absence of an unfavorable plebiscite Chile was intended to be the sovereign of the territory, and that, as appears in the Chilean *Libro Rojo* (Red Book) of 1908 (Appendix, Exhibit 93), and for the first time disclosed in the Vergara note, the provision for the plebiscite was merely an empty formality, designed to effect a simulated cession of sovereignty. This misunderstanding of the legal status of the occupation, were it genuine, might explain many of the Chilean contentions and arguments.

The new Peruvian representative awaited an opportunity from 1905 to 1907 to open up the question of the protocol for the plebiscite, for which primarily the mission at Santiago had been reestablished. The Peruvian Minister of Foreign Affairs complained bitterly to the Peruvian Congress, in the Session of 1907, against the wrong done to Peru by the intentional apathy thus evidenced by the Chilean Government. During the last months of 1907, Señor Guillermo A. Seoane, the new Peruvian Minister, succeeded in reopening the negotiations. On delivering his credentials he expressed himself as follows:

> "There is only one spot, but a prominent one, which tarnishes the picture of our cordial relations. It is produced by divergencies of view: I mean the Tacna and Arica Question. This problem has been in an anomalous condition ever since 1883, and should have been solved by means of a plebiscite ten years after the treaty of peace was ratified. However, in spite of the time which has elapsed, the national feeling of the entire Peruvian nation has been preserved and transmitted with the same strength it showed during the epoch of sacrifice and glory. Such feeling is as intense and

imperishable, Mr. President, as that which the Chilean people have for their own nationality. The loyalty and honor of both Republics guarantee the treaty; and the desired solution depends upon that treaty. The difficulty of carrying out a plebiscite is not an insuperable one for statesmen devoted to the study and practice of law; it may be overcome by means of the principles of universal legislation. I should consider myself very fortunate, Sir, if I could have the honor to add my name to yours, in carrying out a task so beneficial to public law and to the real public good. After the Tacna and Arica problem has been solved in the way I have pointed out, the fraternal relations of former times will be thoroughly reestablished, and past hatred and suspicion forgotten."

The answer of the President of Chile, Señor Montt, as regards the Tacna and Arica question, was:

"The hearty desire of my Government to entertain cordial relations with all countries is stronger as regards our race, because of our common origin and destiny; but it is paramount towards Peru, in whom we should like to dispel the last impression of past days, which, although glorious, remind us of irreparable sacrifices. The difficulty which separates us as yet, a territorial problem I mean, was created and still exists because the exact date for carrying out the plebiscite was not determined in the treaty, nor were the proceedings for putting it into practice. In order to solve the difficulty a formula must be found, which, based on the treaties, will take into consideration the legitimate expectations and rights of both countries."

It may therefore be seen that both parties in turn expressed the view that "the desired solution of the question depended upon the treaty" and "that a formula had to be found . . . . based on the treaties."

On March 25, 1908, Dr. Puga Borne, then Minister of Foreign Affairs of Chile, addressed to Señor Seoane

a note (see Memorandum presented to the Department of State by the Peruvian Legation in Washington, on May 28, 1908) in which he expounded the following ideas. (Appendix, Exhibit 88.) That it was preferable, before facing the Tacna and Arica problem, to begin by a series of projects, intended to create and stimulate friendly international ties; and that Chile and Peru would undertake a practical, wise, and patriotic work by involving the solution of their territorial controversy in a series of conventions, tending to firmly establish the common interests of both nations. The joint negotiation proposed consisted of the following five items: (1) A commercial convention, granting free admission or reduced importation duties in favor of such products of each country as are consumed by the other; (2) a convention in favor of the merchant marine and proposing the establishment of a line of ships, paid or subventioned by both governments, with the purpose of developing the commerce of their coasts; (3) the union of both countries, in order to apply their resources and credit to build the railway between Santiago and Lima; (4) a protocol, stipulating the form of a plebiscite, which is to determine the definite nationality of Tacna and Arica; (5) a convention to increase the indemnity to be paid by the country which acquires the final sovereignty over the said territory.

Dr. Puga Borne then went on to state that the joint negotiation had to be considered as one whole and indivisible; and explained its different points. As regards the protocol establishing the conditions under which the plebiscite in Tacna and Arica was to take place, he said:

> "Your Excellency well knows that the treaty of 1883, whilst stipulating that the definite nationality of Tacna and Arica would be established by a plebiscite, did not specify the exact mean-

ing of the said plebiscite, nor did it determine the manner and form in which it should be carried out. These omissions cannot reasonably be attributed to forgetfulness of the negotiators, but can only signify an implicit agreement to adopt the same proceedings as those recorded in the history of international law. My Government, however, wishing at present as in the past, to come to a friendly solution, would be disposed not to enforce its rights, such as granted by the letter and spirit of the third clause of the Treaty of Ancon; nor would it either exact the strict maintenance of the rules set by authors and by diplomatic precedents for plebiscitary acts, as long as Peru would facilitate the solution by renouncing its extreme pretentions, which would certainly render such a solution impossible. Your Excellency cannot fail to see that the right of vote has not in this case the aim and meaning which the constitution and internal laws of each country attribute to political suffrage. Its character is eminently international, for its object is to determine to which country pertains the definite sovereignty over a disputed territory. There can be no doubt therefore that all the competent inhabitants of the said territory must be called to exercise their rights in the plebiscitary vote; and not only the citizens of both interested countries domiciled in the territory and in possession of their full legal rights, but foreign residents who are in similar conditions as well. The opinion of foreigners must be consulted in the plebiscite, because their rights have been implicitly recognized in the treaty, when the formula 'popular vote' was used; and because it is not equitable nor reasonable to deprive them of taking part in a consultation regarding the future of the land where they have established their interests, where they have founded their families and to whose prosperity they principally contribute, by their persevering and fruitful work. *My Government also believes that as it is actually exercising the sovereignty over Tacna and Arica, it has the exclusive right to desig-*

nate those who should preside over the plebiscite, by inscribing the electors, receiving the votes, and proclaiming the result. And on this point I am glad to renew to Your Excellency the most peremptory assurance of my Government to adopt such measures and formalities as may insure the entire confidence of your government in this popular consultation, as well as a result devoid of all possible recriminations. Coming to the details which are a cause of preoccupation to Your Excellency, I may state that I see no inconvenience in constituting the electoral board, by admitting Peruvian and foreign citizens to take part in it. The project of convention, which I have had the honor to propose to Your Excellency, marked 'Number Five,' stipulates an increase of the amount to be paid by the country favored by the plebiscite. I believe that this would constitute a very effective way of obtaining what I most aim at; that is a solution of the problem that may leave as little ill feeling behind it as possible. We could fix the amount at two or three million pounds sterling." (Italics ours.)

The Minister from Peru, in his answer dated May 8, 1908 (Appendix, Exhibit 89; see also the above mentioned Memorandum of May 28, 1908), after certain preliminary observations of historical interest, alludes to the interrelated subjects suggested for negotiation as follows:

"Matters unconnected with and independent of the Treaty of Ancon can be negotiated separately, and will receive the special attention of the Peruvian Government, after the plebiscitary protocol has been put into execution; that is to say, when the problem of Tacna and Arica shall have been eliminated from the relations between Peru and Chile, for the said protocol, which refers to the execution of a solemn treaty can hardly stand on the same footing as the other treaties."

And before analyzing the question of the plebiscite, he textually states that:

"The negotiations with which my government has intrusted me look to the fulfillment, not the modification of the third article of the Treaty of Ancon, of October 20, 1883. For this reason I have asked to negotiate a protocol, which in accordance with the said article, shall establish the form of the plebiscite, and the conditions and instalments for the payment of ten million soles, to be given by the country remaining in possession of the provinces. To pretend to increase the amount of the indemnity fixed by the treaty, is to modify it, breaking its unity and the correlation existing between all its clauses, and rendering harder for Peru the fulfillment of the only stipulation yet to be carried out, whilst Chile has profited by all the advantages of the treaty. And as I have had the honor of telling Your Excellency, my Government would only abandon the stipulations of the Treaty of Ancon, to insure the definite and immediate reincorporation in the national territory of the Provinces of Tacna and Arica. Peru is confident that the plebiscite, carried through in accordance with the precepts of its juridical institution, will be in its favor; and I believe, if Your Excellency will forgive my frankness, that in Chile also there exists, as to the final result, a conviction which has been already disclosed by some of its prominent statesmen, when they confess the sterility of that laborious task of 'Chilenizing' which has lasted nearly a quarter of a century. If the contrary had been the case, not many of the predecessors of Your Excellency would have practically postponed the plebiscitary procedure, by unacceptable suggestions; nor would Your Excellency have spontaneously proposed to increase the indemnity. For the country that has faith in its triumph, a pecuniary imposition superior to the stipulated one, is not convenient. That large sum would be considered in Peru as a new sacrifice imposed by a war which terminated 25 years ago; or like an incentive for the parties concerned to grant in the plebiscitary protocol concessions equivalent to a forfeiture

of their rights; that is to say, a covert sale of Tacna and Arica, contrary to the wishes of the inhabitants, without whose intervention any dismemberment of the national territory is illicit and in opposition to the unanimous aspirations of the public sentiment in Peru. As these possible suppositions are erroneous, and as my Government cannot perceive any reason to modify the treaty, which is the basis of the negotiations, I must in its name declare that it does not accept the said proposal."

Coming then to the main question, Señor Seoane examines in three parts Dr. Puga Borne's proposal.

In the first part, Señor Seoane refutes the argument of the Chilean Minister of Foreign Affairs, that a plebiscite in the history of international law is but a simulated form of cession.

> "In practice," he says, "often such principles were mocked, and the vote registered suffered the effects of brutal coercion and fraud. Hence the repeated triumph of the annexing state. However, compulsion is not a legal factor, but a ground for annulment. The historical cases in which a plebiscite of this kind was put into practice, prove that in order to obtain a prearranged result, abuses were committed, such as at times occur in local elections. But, just as the latter are not invoked to legitimate those abuses of internal politics, no more can one infer from the former that in the sphere of public law, the free plebiscites have become a dead letter and are no longer anything but the disguised and diametrically opposite principle of conquest; and that therefore this conception is the one always intended in all the documents which mention the popular will as a condition of the transfer of sovereignty."

Señor Seoane then goes on to show that if Peru had intended to impose on Tacna and Arica the fate of Tarapacá, which, by Article 2 of the Treaty of Ancon, was perpetually and unconditionally ceded to Chile, it

would have agreed to a popular vote as regards Tarapacá, or would have omitted that condition for Tacna and Arica.

Examining the historical part of the case, Señor Seoane proves that there is a great difference between the treaty of Ancon and the treaties of Turin, March, 1860; of Prague, August, 1866; of Prague, the same year, but a day later; and of Paris, 1877, in which the respective sovereigns transferred a part of their territory of other nations. In the Treaty of Ancon, on the contrary, Peru clearly shows that it did not wish to suffer any further mutilations of its territory. Señor Seoane concludes by indicating that the negotiations which preceded the Treaty of Ancon support this assertion; and he mentions the Arica conferences on board the U. S. S. '*Lackawanna*,' in 1880, as additional evidence of the intentions of Peru.

Then coming to the various efforts made by Peru in the subsequent years, with a view to the fulfillment of the Treaty of Ancon, and to the proceedings and declarations of Chile, which indicate that, until quite lately, it had considered that "in the treaty of peace, the definite nationality of the territories (Tacna and Arica) remains undecided" (President Errazuriz of Chile in his message to Congress of 1900), Señor Seoane finally declares: "We must therefore dismiss the inference which assumes a simulated cession, or the conquest of the territories of Tacna and Arica; this inference being deduced, not from the text or the spirit of the Treaty, but from European plebiscites, which are not at all in point."

In the second part of his argument, Señor Seoane denies the Chilean Government's privilege to carry out the plebiscite under its exclusive direction, in regard to the registration of electors, the reception of the ballots and the announcement of the returns.

"What is the legal title of sovereignty alleged by Chile today over the provinces of Tacna and Arica? It is not occupation, because the provinces were not *res nullius*, nor is it the bloody military invasion during the war ended by the treaty of 1883, in fulfillment of which the Chilean army left the occupied country, with the exception of the provinces of Tarapacá and Tacna and Arica. Chile's title depends exclusively on the treaty of 1883. Article 3 states that the territory of the provinces shall remain in the possession of Chile, subject to Chilean law and authority, during a period of ten years to be reckoned from the date of the ratification of the treaty of peace."

On the 28th of March, 1884, Señor Seoane points out, ratifications were duly exchanged at Lima. The period of ten years ended in 1894, and thereupon Peru legally recovered its entire domain, which had been suspended in part.

"Therefore Señor Jimenez, Minister of Foreign Affairs, reminded the Chilean Minister, in June, 1893, of the opportunity afforded to return the provinces temporarily occupied. This having been objected to, he proposed then to submit the case to the decision of a friendly power. Later, on the eve of the end of the period, Señor Ribeyro, Peruvian Minister at Santiago, stated again that Chile was not entitled to occupy the provinces after the 28th of March, 1894. This statement agrees perfectly with the spirit and the literal meaning of the treaty. Article 3 adds, following the above quoted words:

'after that term—ten years—a plebiscite will decide by popular vote . . . .'

which means that the plebiscite will be held after the term of ten years has expired, and not during that term. It is natural, indeed, that no coercion in favor of their own cause should have been exercised by the authorities, however greatly impelled by an exaggerated patriotic zeal, against

the people whose good will, during this ten-year period, they ought to have made efforts to secure by making the government of the country in occupation, more agreeable.

"The expiration of the term implies a termination of the right which governed by common agreement, during that term. Possession during a term categorically fixed cannot be extended nor become definite by the sole will of the party which enjoys such possession, and in spite of the protest of the other signatory party. For this reason indeed Señor Mariano Sanchez Fontecilla, who was another distinguished predecessor of Your Excellency, proposed to Señor Ribeyro, amongst other points, the following:

" 'the term of ten years, agreed to in the treaty of Ancon, shall be extended until the 28th of March, 1898.' As we objected to any delay, your government ought to have handed over the Peruvian provinces, according to the aphorism of universal law which says: when the term of a precarious holding ends, the direct owner recovers his domain completely."

Further examining the plebiscite of 1860, favorable to France and held under the control of the authorities appointed by the King of Sardinia; the one of 1866, favorable to Italy, carried out under the direction of Count Michel and other distinguished citizens; that of 1877, favorable to France, and directed by the King of Sweden, Señor Seoane infers that these precedents all prove that the natives of the locality affected carry out the plebiscite and that "as the renunciation of the transferrer, who was the sovereign, was absolute and explicit on behalf of himself and his descendants and successors (an essential point of difference from the Treaty of Ancon), he could afford to let the annexing sovereign enjoy full liberty. Nevertheless, in two cases out of three, it is the transferrer who assumes the control of the plebiscite, according to the said official records."

And he concludes by saying:

> "Rights cannot proceed from illegality. Therefore, the right of sovereignty which Chile never possessed, cannot be invoked to enable her to preside over the proceedings and still less the right to direct them uncontrolled; to register the voters, to receive the ballot in favor of or contrary to her aspirations, to verify the returns and proclaim the result. Your Excellency is good enough to inform me that 'you have no objection' to Chilean authorities, 'when the electoral Boards are constituted, allowing Peruvian citizens and those of other nationalities to be represented thereon.' These latter citizens could only be the umpires appointed by mutual agreement by our respective Governments, to preside over the electoral function. My Government, although it possesses sovereign rights over the provinces of Tacna and Arica, but prefers not to exercise them so as not to assume the double character of judge and party, cannot accept, still less as a condescending act of grace, the subordinate and even humiliating participation which, considering the friendly and conciliatory spirit that pervaded our deliberations, I would have preferred Your Excellency had not suggested. Although I do not doubt the sincerity of the promised impartiality which Your Excellency reiterates, I would remind you that the expectations respecting Tacna and Arica are just as vigorous in Peru as they are in Chile; and that, according to the fundamental principles of justice therefore, the only logical deduction of this right, equal for both, is that both countries should have equal share in and equal positive guarantees, so that the plebiscite may express, witnessed by both, the decision of the people. This is a condition which was, moreover, agreed to in the Billinghurst-Latorre protocol."

In the third part of his note, Señor Seoane shows that only the natives have a right to vote and that foreigners retain their legal status, unless they become citizens of

the country in which they live. He affirms that foreigners are deprived of political rights, the more so when it comes to the choice of specified sovereignty over the territory of which they are not citizens. "If Peruvian citizens," he says, "not born in Tacna and Arica, are forbidden to vote in the plebiscite, and if at the same time foreigners were allowed to vote, they would be in a more advantageous situation than Peruvians, although, juridically speaking, they are not supposed to have any direct interest in the outcome of the plebiscite."

He continues:

> "To grant them the right to vote is to attribute to them a joint dominion, equally with the citizens of Peru, over the territory which they temporarily inhabit; of lordship over those who give them hospitality for the time being, to the extent of allowing them to decide upon their future state, thus slighting the sacred love of country; it would be equivalent to allowing them to inject themselves into the matter of the dispossession and denationalization of those very inhabitants; to violate that neutrality which the most elementary rules of right impose upon them in every international dispute."

Quoting a distinguished Chilean statesman, Señor Seoane goes further and declares that Chileans are to be excluded from the plebiscite. In fact, he says, "the distinguished statesman from Chile, Señor Luis Aldunate, declares in his report to the Congress of 1883, right after the Treaty of Ancon, having shown the influence upon the plebiscite of the transitory Chilean administration: 'If all these causes should induce the inhabitants of Tacna and Arica to choose the Chilean nationality, in such case, which is perhaps the most probable, the assimilation of our new fellow-citizens would take place beforehand, without violence or dis-

turbance, requiring nothing more than a simple rectification in the geographical map of Chile.' "

These statements of the Minister of Foreign Affairs, who had been a delegate of the Chilean government when the treaty of peace was being discussed, afford evidence, says Señor Seoane, that the voters induced to choose Chilean citizenship, the "new fellow citizens," were not Chileans, but Peruvians, whose assimilation was supposed to take place as a result of good government in the provinces. "Chilean residents in these provinces are just as foreign as other foreigners. Having no rights in the Peruvian sovereignty, and not affected in their personal status by the result of the plebiscite, their vote in favor of Chile would mean, not only a breach of neutrality, but an effective support to an act of conquest, which disqualifies them even more evidently."

And studying the regulation of the plebiscites of Nice and of Savoy, and analyzing the treaty of Vienna, the plebiscite of the Italian provinces freed from Austrian occupation, the treaty of Paris and the one of the island of Saint Bartholomew, he proves that when they deal with the right to vote they only apply to natives, and never to foreigners, nor to subjects of the presumed annexing power.

The Minister from Peru's note terminated with these words:

> "The spirit and legal effects of the plebiscite having been exhaustively described in the foregoing paragraphs, I have now to remark that the historic procedure to which Your Excellency refers, has two different aspects. One is the regulation beforehand of the *modus operandi*, issued by the authorities in Nice and Savoy, in the Italian provinces and in the Island of St. Bartholomew, as is shown in detail. The other is—in several cases immediately subsequent to

the treaty with the transferring Sovereign, who had no further interest in the population or populations, which he expressly and absolutely abandoned—that of brutal coercion and fraudulent manipulation to attain, at all costs, the appearance of a legal transfer. I hasten to recognize, Mr. Minister, that the Chilean Government is not seeking to carry out the performance under this latter aspect, which would seriously impair the prestige of the Administration of His Excellency, Señor Montt. Historic precedents are thus reduced to the question of the by-laws of plebiscites, likewise at times contravened. Therefore, if the negotiators of the Treaty of Ancon did not have those precedents in mind, it is reasonable to suppose that what they had was the matter of the rules and regulations for a legal plebiscite. This interpretation is ratified by the statement of Your Excellency's worthy predecessor, Señor Luis Aldunate, in his report already referred to of the same year: 'If, as the result of a plebiscite, the territory of Tacna and Arica should return once more to Peru, it would behoove Chile's honorable and loyal policy to respect the verdict of these people.' I am happy to be able to declare, Sir, that as far as this point of view is concerned, which truly solves the chief difficulties, I will accept, with some minor modifications, Your Excellency's interpretation. We agree with Your Excellency in considering it our first duty to put an end to a situation which, for a long time past, has profoundly disturbed the harmony of other days. For these reasons, and those previously mentioned, I beg to invite Your Excellency to further conferences until we reach an agreement, grafting on to the disputed clauses of the Billinghurst-Latorre protocol, which we can use as a foundation, the positive precepts of diplomatic precedents, in agreement with the principles of right and justice. These precepts, Mr. Minister, are the ones which, for men as for communities, silence the immoderate counsels of

self-interest, which fortify confraternity among nations by means of enduring bonds and harmoniously encourage their aggrandizement without dishonoring them, thus satisfying the lofty demands of patriotism, and those no less important of love of humanity and civilization. I am convinced that the high-minded government of Your Excellency will see the matter in this light, which would enable us to defer to that spirit of Pan-American solidarity, which to-day prevails among all the nations of our continent, for the equitable settlement of the differences which divide them."

The Chilean Foreign Office abandoned the proposition of Minister Puga Borne without responding to the last invitation of the Peruvian Minister to renew the conference, but published instead an official Red Book (*Libro Rojo*) which contains the technical justification of the Chilean Government for the views maintained in the controversy with Peru. (Appendix, Exhibit 93.) This Red Book develops the thesis first announced in 1905 by Foreign Minister Luis A. Vergara.

Without an understanding of the development of the Chilean policy, which had now apparently reached the conclusion that the provinces of Tacna and Arica were to be permanently retained by Chile, regardless of the provision for a plebiscite, it would be difficult to understand the reasoning involved in this thesis. Chile maintained, with all the plausibility and attractiveness which the arts of advocacy can summon, that international plebiscites of the last two centuries had been nothing but methods invented in order to sanction annexations already effected, such as had taken place at the time of the French Revolution, or else to disguise an annexation or cession already made, such as had taken place in the nineteenth century. From these alleged historical facts Chile draws the conclusions that treaties for a plebiscite are concluded not in order

to consult the population, but to justify *pro forma* under the appearance of a popular vote an agreed transfer of sovereignty.

Into this thesis it undertakes to fit the case of the plebiscite stipulated in Article 3 of the Treaty of Ancon, asserting that the negotiations which preceded that treaty demonstrated that the cession of Tacna and Arica was always the essential condition of peace, which could only be effected if Peru consented to the cession. It declares that in any event Chile has the right to demand that not merely a majority vote shall deprive it of its sovereignty over the Peruvian provinces, and it cites the alleged opinions of certain publicists who have sustained the necessity of unanimity or preponderant majority of the votes, such as was stipulated in 1864 for the return of the northern part of Schleswig to Denmark. It establishes the view that this return of Schleswig marks the method which nations ought to follow, and in particular Peru and Chile, because it was established by two great Powers, and that the stipulations of the plebiscite ought to remain without effect if their execution is contrary to permanent interests and gives rise to political uncertainty. It terminates by declaring that the situation arising out of Article 3 of the Treaty of Ancon concerning the plebiscite in Tacna and Arica is not susceptible of arbitration, and that there being disagreement between the parties, the said article must be considered as null and void. It then affirms the sovereignty of Chile which the passage of time would merely aid in legitimating.

This is a remarkable argument, as the impartial observer will concede. Yet it is not without an explanation or without importance. Coming fifteen years after the time when the plebiscite should have been held, it undertakes to show that the provision for the plebiscite was never really serious or genuine, and

that it is a mere device to disguise a definitely concerted annexation. It throws a clarifying light upon the Chilean attitude toward holding the plebiscite, both before 1908 and since then. It justifies, both to the Chilean people and necessarily to the outside world, the Chilean reluctance to have a plebiscite held, for there can be no charge of recalcitrance or bad faith in throwing obstacles in the way of, or in refusing to undertake, that which was never intended to be done.

Apart from the fact that the contention constitutes the most convincing support for the Peruvian assertion that Chile never intended to have an honest plebiscite held at or near the time when it should have been held under the Treaty of Ancon, it apparently stamps with the mark of hypocrisy the Chilean professions of willingness to have the plebiscite held. It shows beyond peradventure, it is believed, that Chile had made up its mind to seek to retain the provinces by one means or another and the occasional disposition to enter into conversations with the Peruvian representatives seem merely designed to cover with the cloak of legality and plausibility the intention to avoid the holding of the plebiscite.

Reference has already been made to the assertion of a number of Chilean publicists, who doubtless gave birth to the argument of the Chilean Foreign Office, that the plebiscite was a meaningless formality and that Chile obtained permanent dominion of the territory. This view, however, while Chile's policy has sought to carry it into effect, is not derivable from the Treaty of Ancon, but from the fact that Chile has flown directly in the face of the Treaty of Ancon. Whatever the Chilean authorities may have "believed" to be the effect of the possession of Tacna and Arica or the result of the plebiscite if held, the fact is incontestable that the plebiscite was clearly provided for and

that negotiations for carrying it into execution were subsequently undertaken. The Chilean case, in fact, is disclosed as no argument of Peru could reveal it, by the Chilean assertion that the plebiscite was a meaningless formality not seriously intended to be carried out and designed to conceal an intended annexation.

In the most recent note of the Chilean Minister of Foreign Affairs of December, 1918 (p. 47), he refers to the Chilean note of 1905, in which Chile took the position that "Peru ceded to Chile the full and absolute sovereignty of those provinces without any limitation with respect to its exercise and only a limitation as to its duration in the event that a plebiscite should so declare."

This position assumes that the cession was absolute in complete sovereignty, to be divested only on the unfavorable outcome of a plebiscite, a condition subsequent; that condition not having been performed, the title is as unlimited and complete now as when first transferred.

The contention overlooks, it would seem, the express language of Article 3. Inasmuch as Chile was in a position to dictate the terms of the whole treaty, there is no reason to suppose that the language does not accurately express Chile's intentions at the time. That Article provides that Tacna and Arica, then militarily occupied by Chile, "shall continue in the *possession* of Chile, subject to Chilean legislation and authority for a period of ten years. . . . At the expiration of that term, a plebiscite will decide . . . . whether the territory . . . . is to remain definitely under the dominion and sovereignty of Chile *or is to continue to constitute a part of Peru.*"

The meaning of these clauses seems clear. Chile is to continue for ten years a *possession* she then exercised. Such possession was at the time military occupation,

which automatically subjected the territory to Chilean legislation and authority. That possession or occupation is not the equivalent of sovereignty seems obvious. Transfer of "possession" for ten years is utterly inconsistent with any transfer of sovereignty. If it had been intended to transfer complete sovereignty to Chile, how could the negotiators, in describing the status after an eventual plebiscite favorable to Peru, have used the phrase, "*is to continue to constitute a part of Peru.*" There cannot be two sovereignties in the same place at the same time. Evidently the territory was recognized to be and to continue *a part of Peru*, which precludes the validity of the contention that it was to become immediately a part of Chile. That could not happen until a plebiscite favorable to Chile had taken place, and that condition having been accomplished it was *thereafter* "to remain definitely under the dominion and sovereignty of Chile." That is, Tacna and Arica were to continue to be a part of Peru until a condition precedent, a vote favorable to Chile, occurred as an operative fact to change this status and transfer complete and permanent sovereignty to Chile. It was not, as Chile has contended, a complete cession of sovereignty to Chile, subject to being divested by the happening of a condition subsequent, a vote unfavorable to Chile. But for the earnestness with which certain Chilean publicists have in recent years advanced the contention that complete sovereignty was immediately transferred to Chile, it might be said that the construction of the express language of the article was not open to serious question, and it is in fact difficult to escape the conclusion that the contention is an afterthought designed to rationalize the desire to retain the territories and excuse the failure to hold the plebiscite.

Some of Chile's most extreme protagonists, e.g.,

Blanlot Holley (*op. cit.*, pp. 53–54), support the claim of absolute sovereignty by showing that the attributes of sovereignty are "possession," "legislation" and "jurisdiction" all of which Chile had. But this argument omits one important attribute of sovereignty, namely, the power to convey a good title; and the absence of this important power Chile herself recognized by her negotiations of 1883 with Bolivia (Appendix, Exhibit 48) and by her treaty with Bolivia of May 18, 1895 (Appendix, Exhibits 112, 113), Article 1 of which provides:

> "If, in consequence of the plebiscite which is to take place in conformity with the Treaty of Ancon, or by means of direct arrangements, the Republic of Chile should acquire permanent dominion and sovereignty over Tacna and Arica, Chile incurs the obligation to transfer them to the Republic of Bolivia in the same form and extension in which they are acquired."

An examination of the terms of Article 3 of the Treaty and of the contemporary interpretation thereof by the Chilean Government leads to the inevitable conclusion that Peruvian sovereignty in Tacna and Arica has never been lost. Nor did Chile question this fact until it became obviously necessary to rationalize her persistent recalcitrance in avoiding the organization of a plebiscite and to justify her conduct in the territory, palpably designed to defeat a fair consultation of the popular will.

The advocates of Chile earnestly contend that the provision for a plebiscite was a mere formality to allay public opinion at home in Peru and to remove all pretext to the opposition against the new government which signed the treaty; and that the negotiators were fully aware that it was intended to be a complete cession of sovereignty to Chile, the plebiscite being a mere screen to "save their faces." This view is

believed now to be widely entertained in Chile. See Chilean *Libro Rojo*, 1908. (Appendix, Exhibit 93.) Those who advance it do so in order to explain the failure to hold the plebiscite, presumably on the theory that a failure to do that which was not intended to be done negatives culpability. Without emphasizing the fact that this view contradicts the plain words of the treaty, and under ordinary municipal rules of evidence is inadmissible to vary the express language of a document (Wigmore, Evidence, Secs. 2430, 2442, 2462), it does not seem to be consistent with the allegation occasionally advanced that Chile has used all reasonable efforts to have the plebiscite held, but that Peru has prevented it.

The contention is supported by various arguments. The first is, that in the previous negotiations Chile had always insisted on the cession of Tacna and Arica, either directly or under such conditions that redemption by Peru was improbable. It will be recalled that among the terms pressed by Chile at various times were (1) at Arica in 1880, the payment of twenty millions; Tacna, Arica and Moquegua to be occupied until the payment was made; (2) Chilean refusal to submit the disposition of Tacna and Arica, with other questions, to arbitration; (3) Minister of Foreign Affairs Balmaceda's proposal to Mr. Trescot, namely, the occupation of Tacna and Arica for ten years, at the end of which time Peru was to pay twenty million pesos or soles, Tacna and Arica to be ceded to Chile if the money was not paid at the time indicated; and (4) Chile's offer to Garcia Calderon to purchase Tacna and Arica for ten million pesos. From these various proposals, all of which in the view of Blanlot Holley (*op. cit.*, p. 21 *et seq.*), of Rafael Egaña (*op. cit.*, p. 60 *et seq.*), and of Dr. Orrego Luco (*La Question du Pacifique*, Santiago, 1919, p. 26 *et seq.*) indicate an irrevoc-

able intention on the part of Chile to retain permanent sovereignty over Tacna and Arica—for these publicists assume that Peru would have been unable to meet the conditions mentioned, where conditional cessions were proposed—the Chilean advocates conclude that the plebiscite was a meaningless formality and was so intended by the negotiators. See Chilean *Libro Rojo*, 1908 (Appendix, Exhibit 93).

Not only is such a conclusion inadmissible in view of the express language of Article 3, but the conclusion itself does not seem reasonably supportable by the premises. The terms proposed changed somewhat with each negotiation and it is quite consistent with the previous negotiations that Article 3 should compromise the opposing extreme positions by providing for a plebiscite. (See *infra.*) Moreover, in view of Chile's favorable position for the incorporation into the treaty of her own views, it would seem to have been possible to express these views in language less unfavorable to the Chilean contention. The theory that it was intended to be a complete cession is also, as already observed, contradicted by the first part of Article 3 which speaks only of Chilean "possession." If the provision for a plebiscite was designed not to be carried out in good faith, but to be a mere formality to enable the Peruvian negotiators to "save face," it would have been just as easy for the Chilean negotiators, it would seem, to have provided for the transfer of complete sovereignty to Chile immediately, subject to its being divested on the unfavorable result of a plebiscite. The population was preeminently Peruvian. The clause actually incorporated in Article 3 makes a favorable plebiscite a condition precedent to the inauguration of Chilean sovereignty over the territory, whereas the method just mentioned would have made an unfavorable plebiscite a condition subsequent for the

loss of Chilean sovereignty. Chile's contention that this last suggestion is the correct interpretation of Article 3 has already been refuted.

The other argument in support of the contention that the plebiscite was a meaningless formality is supplied by the views alleged to have been expressed by various personages of the time, including the negotiators, that the cession, though conditional in form, was really unconditional. While it is possible that expressions of opinion may have been uttered to the effect that Chile would obtain permanent dominion of the territory and that Peru had lost it, this was not because of an honest interpretation of the treaty or because Article 3 did not seriously contemplate a plebiscite. The allegation that the Peruvian negotiators expressed any such view is not supported by a single quotation or any evidence. (See Egaña, *op cit.*, p. 72 *et seq.;* Orrego Luco, *op. cit.*, p. 30 *et seq.*). On the contrary, the statements made by Luis Aldunate, Chilean Minister of Foreign Affairs, in submitting the treaty to the Chilean Congress for ratification in 1883 (Appendix, Exhibit 46), are a standing and decisive refutation of the disingenuous argument that the treaty meant something different from what it expressly said. Indeed, Blanlot Holley (*op. cit.*, p. 51) says: "In *contradiction* of the Peruvian negotiators, the Chilean representatives have invariably declared that by the Treaty of Ancon, Chile acquired Tacna and Arica." The fact is, as Luis Aldunate's statement (Appendix, Exhibit 46) and the views expressed by other Chilean statesmen already cited amply demonstrate, the "Chilean representatives" have not "invariably" so declared, for to have done so would seriously impugn their integrity. Whatever may have been *believed* to be the *effect* of the possession of the territory or the result of the plebiscite, if held, the

fact is incontestable that the plebiscite was clearly provided for and that some negotiations for carrying it into execution were subsequently undertaken.

The good faith of this particular argument as to the empty formality of the plebiscite is not strengthened by such statements as the following made by Dr. Orrego Luco, former President of the Chilean Chamber of Deputies and a leading publicist of Chile:

> "The declarations of the negotiators, Peruvian as well as Chilean, agreed in attributing to the plebiscite the character of a meaningless formality which was to take place at a distant period when, the Chilean domination having had sufficient time to ingrain itself thoroughly into these provinces, its favorable result to Chile could not be open to the slightest doubt." (*Op. cit.*, p. 30.)

Whatever truth there may be in the aphorism that language is useful to conceal thought, it cannot seriously be contended that the plain words of a treaty have a meaning exactly opposite to that clearly expressed therein.

It is not unnatural that the Chilean thesis created excitement and increased the discouragement and depression in Lima, for it seemed to become evident that the arguments of justice and reason could not prevail in Santiago. In this connection it is interesting to observe the professions of injured innocence which on occasion the Chilean Government has displayed when the Peruvians protested against the treatment to which they had been subjected by the Chileans in their attitude toward the holding of the plebiscite. A reference, for example, in a message of the Peruvian President to Congress in 1909, in which he protested against the recalcitrant injustice of Chile in declining to hold a plebiscite on reasonable terms, evoked a protest and remonstrance against this charge, from the Chilean Minister of Foreign Affairs, Agustin

Edwards. (Appendix, Exhibit 90.) Such Chilean invitations to enter on the discussion of the facts have invariably been accepted with alacrity by the Peruvian Government, because the Peruvian case is nourished and strengthened by publicity, whereas the Chilean case, it is believed, is not. For that reason, as in the case of the 1900 circular of the Chilean Minister of Foreign Affairs (*supra*, *p.* 108), the publication of the Chilean case can only weaken it in public esteem, for its central point consists in an effort to explain the violation of the express words of a treaty, and the argument adduced in its support can hardly, it is believed, bear the light of impartial examination. The Peruvian Minister of Foreign Affairs in 1909, Dr. M. F. Porras, did not long delay in answering the Chilean remonstrances, and in his note of September 9, 1909 (Appendix, Exhibit 91), he effectively disposes, it is believed, of the Chilean contention that the charge against Chile is unjustified.

Chile, doubtless acting upon the thesis above mentioned sought, in 1909, to settle the irritating question by suggestions for a plebiscite which would presumably carry out the Chilean purposes. By 1909, it must be remembered, Chilenization, which will be described more fully in Part VIII of this Case hereafter, had proceeded to a point where Chile, providing it could manage the plebiscite, seemed less disposed to avoid it. Through the hand of its Chargé d'Affaires at Lima, a proposal was submitted for a plebiscite on the following bases: (1) all the inhabitants enjoying electoral rights who have resided in the territory six months shall vote; (2) the Chilean Government shall preside over the commission which would conduct the plebiscite, as well as the commissions for registration and counting the votes; (3) the plebiscite would take place when Chile had fulfilled the obligations contracted toward Bolivia (Appendix, Exhibit 92).

The Peruvian Minister of Foreign Affairs thereupon made the following counter proposal:

1. The commission charged with organizing the plebiscite shall commence to function within three months from the signature of the protocol.

2. All Peruvians and Chileans who possess the following qualifications may take part in the vote, which shall be public: Those having reached the age of twenty-one, and who have resided in the territory at least from July 1, 1907; also natives of Tacna and Arica present at the time of the vote on condition of previous registration; public employees and members of the army or police on duty in the provinces shall not be allowed to vote.

3. The commission directing the plebiscite shall consist of three members: a Peruvian, a Chilean and a neutral, designated by a friendly nation. The presiding officer shall be the neutral. The commissions for registration and counting the votes are to be similarly composed and likewise presided over by the neutral.

4. The commission organizing the plebiscite shall designate the places where the registration boards and the voting boards shall sit. In all other matters of detail the Billinghurst-Latorre Protocol shall apply. (Appendix, Exhibit 92.)

This counter-proposal was accompanied by a memorandum in explanation thereof, which provided:

1. That Peru is disposed to accept arbitration in order to settle differences which may not be reconcilable.

2. Peru accepts the vote of Chileans in order to prove its desire to reach an agreement, but she does not abandon the theory which she has always maintained, that the exclusive right to vote vests in the natives of Tacna and Arica. Consequently, if the agreement is not consummated, the present occasion cannot be considered as a definite waiver.

3. In judging the proposal of Peru the fact must be taken into account that about sixteen years have elapsed since the period of occupation expired.

4. If there is a discrepancy between the purpose animating the Chilean Government to conclude the agreement in question, and that revealed by the measures adopted or proposed against the Peruvian residents [in Tacna and Arica] and which have furnished the grounds for oral and written protests by Peru, the latter thinks that these measures ought to be suspended, revoked or left unenforced. (Appendix, Exhibit 92.)

In connection with the negotiations between Dr. Puga Borne, the Chilean Minister of Foreign Affairs, and Señor Seoane, Peruvian Minister in Santiago, the principal positions of which have been explained above, it is worthy of note that the cordial words of Dr. Puga Borne expressing a desire loyally to carry out the agreement with Peru, must be read in the light of what the Chilean Government was actually doing. While seeking to prove by the cordiality of its words its lack of responsibility for the successful solution of the difficulty, there was at the same time being initiated in the Chilean Foreign Office a new intensification of the policy of Chilenization, to be carried on with even greater ruthlessness and vigor than that theretofore manifested. The proceedings of the Committee on Chilenization which met in the Chilean Foreign Office under direction of the Chilean Minister of Foreign Affairs, are set forth in a series of minutes of the proceedings which were obtained through the news service of the newspaper *El Comercio*, and were printed in Lima in 1910. They are reprinted in the Appendix, Exhibits 134 and 159, and speak for themselves. Just before the negotiations between Puga Borne and Seoane were undertaken, the Chilean Minister of Foreign Affairs advised the Chilean Minister in Wash-

ington, Joaquin Walker Martinez, that "any agreement entered into can only be on the basis of the final retention by Chile of the whole territory, whose sovereignty and definite nationality this Ministry considers as practically decided already in our favor. . . . We will accept none but conditions of equality which will be tantamount to assuring our triumph in the balloting, as a result of the diligence which we are, of course, exercising to enlist Peruvian good-will and that of foreigners and to increase the number of Chilean inhabitants in the territory." (Appendix, Exhibit 135.)

In August, 1907, shortly before the Seoane negotiations, the same Dr. Puga Borne, in writing to the Governor of Tacna, Maximo Lira, stated:

> "This department maintains its unaltered purpose respecting which it has at all times notified the Peruvian Government, to legally secure *at any cost* definite possession of the territories. This can only be obtained by one of the following means: (1) absolute possession in exchange of a large sum of money and commercial privileges; (2) the signing of a protocol agreeing to a plebiscite *under such conditions as shall insure a majority of votes in favor of Chile.*" (Italics ours.)

The consistent series of Chilean efforts in dealing with Peru and with Peru's neighbors, in explaining Chile's attitude to foreign countries, in adopting measures of Chilenization in Tacna and Arica, supported by the arguments of the Chilean Foreign Office as presented in the Red Book of 1908, sufficiently show that the Chilean Government "at any cost" was determined to defeat the holding of an honest plebiscite as the Treaty of Ancon provided and as the dictates of morality required.

The Chilean Foreign Office disregarded the Peruvian counter-proposal of 1909 but insisted in March, 1910,

in a note from Señor Agustin Edwards, Chilean Minister of Foreign Affairs, and recently President of the Assembly of the League of Nations, on the Chilean thesis of the uselessness of a plebiscite in Tacna and Arica. Señor Edwards said:

> "I must recall to Your Excellency that the plebiscites recorded by history prove that they are only a means invented by governments in order to obtain, under the appearance of popular suffrage, a cession or annexation agreed upon in advance in order to avoid, so far as possible, wounding the national sentiment of the dismembered country. The reason is apparent; governments could not seriously consent to deliver up to the eventuality of a vote the fate of an essential territory, as is the case in the security of frontiers and necessary to compensate sacrifices of blood and money."

At the same time Minister Edwards recurred to the proposition of a plebiscite on the previous bases without modifying anything except the time of the vote, which he fixed at six months after the ratification of the protocol.

Unfortunately for the Chilean argument as to the international interpretation of plebiscites as an empty formality, the peace treaties of 1919 have completely discredited and silenced it.

Apart from the unfairness of a Chilean presiding over the election boards, and of the vote being opened to all electors, whatever their nationality, who had resided six months in the territory, the last provision, to the effect that the vote shall be taken six months after the exchange of ratifications of the protocol, indicates the weakness and unfairness of the Chilean scheme. In the six months between the date of the protocol and the vote, a population *ad hoc* might easily be imported, a policy which the Chilean government has pursued (Appendix, Exhibits 137 *et seq.*), in the belief that some

day a plebiscite might become necessary. Peru, while undoubtedly anxious to secure the majority vote, has always felt, down to the time of the wholesale expulsion of Peruvians and the importation of Chileans, from 1910 to date, more confident of the result of a free, untrammeled vote of the natives, than has Chile—as is evident from the Chilean position in the negotiations from 1892 to 1908—and has naturally interpreted the various proposals of Chile, designed to produce a Chilean preponderance in the vote, as merely an expression of the Chilean view that the provision for a plebiscite in the treaty was an empty formality to disguise an annexation. The Peruvian counter-proposal admitting to the vote Chileans and Peruvians who had resided in Tacna and Arica since July, 1907, and suggesting that the election board be presided over by a neutral, indicates the fairness of the Peruvian position and at the time, 1910, constituted a very considerable concession from its legal rights. These legal rights Peru has never waived.

But even this great concession Chile was indisposed to accept, presumably because it might have resulted in an honest plebiscite, and therefore, was contrary to Chilean policy. That this view of Chilean policy is entirely justified, is indicated by the official Chilean thesis, finally enunciated in 1908, that the plebiscite was a meaningless formality and was not designed to elicit a true expression of the sentiments of the voters. It will also be recalled that Peru has throughout manifested her willingness to leave the question as to the administrative control of the vote and the qualifications of the voters, and any other disputed questions, to the arbitral judgment of a third state, but that Chile, until 1922, resisted arbitration to even the slightest extent, with an unprecedented tenacity.

The continued disregard by the Chilean Government

of the Peruvian protests against the Chilenization measures undertaken in Tacna and Arica, induced the Peruvian Government in disgust and despair to sever all diplomatic relations with the Chilean Government in 1910. (Appendix, Exhibit 140.)

Finally it is proper to note a negotiation in 1912, in the form of an exchange of telegrams between the government of President Billinghurst of Peru and the Chilean Minister of Foreign Affairs. The provisions of this tentative agreement, known as the Valera-Huneeus agreement (Appendix, Exhibit 94), involved in the main a postponement of the plebiscite for twenty-one years, namely, until 1933, and an electoral board to be presided over by the President of the Chilean Supreme Court. The tentative agreement, when submitted to the Peruvian Congress and people, produced a violent outburst of public opinion in Peru against President Billinghurst. Blanlot Holley, the notorious Chilenizer, explains that "the real purposes of the protest [which deposed President Billinghurst from office] are the accusations . . . . levelled against Señor Billinghurst and which prove that the differences at issue between the President and Congress were due to the means adopted for settling the last controversy of the war of the Pacific: whether by force of arms or by diplomacy." (*Revista Chilena*, Dec., 1917, pp. 420–421.)

The real explanation of the Billinghurst agreement lies in the message which President Billinghurst delivered to the Peruvian Congress on November 30, 1912. (Appendix, Exhibit 95.) President Billinghurst explained his position to the Peruvians by stating that the arrangement would bring about a *modus vivendi*, instead of the difficult situation of the moment; that the Peruvians "instead of being subject to the hardships of Chilenization" will enjoy freedom; that the new status was "a Chilean admission of a mere tem-

porary occupation" as against their former claim of sovereignty; that instead of the frustrated efforts of the past to obtain a vote under Chilean dominance, there was a definite promise of a vote at a fixed time, under stated conditions. His main justification of the agreement, however, lies in the fact that, having abandoned all hope that Chile would listen to reason or was disposed to enter into any agreement validly carrying out the Treaty of Ancon, he intimated that the only recourse open to Peru was to resort ultimately to the force of arms. It was to this point that Chilean intransigeance and bad faith had driven the Peruvian statesman. Herein lies the explanation of the policy of removing the subject from discussion for a period of years, during which Peru would exert itself to becoming a strong nation, and, as the President said, "to develop our resources, recover our lost courage, and place us, in a word, in a position to contend on equal terms and to win." Indeed, President Billinghurst is not the only one who has believed that Chilean bad faith could not be countered except by military force, a contingency earnestly to be avoided, for it would open up unhappy consequences to the continent of South America.

When the Chilean Government learned of the message of President Billinghurst, they likewise denounced the agreement. (Appendix, Exhibit 96.)

In *Revista Chilena* of December, 1917, page 412, Blanlot Holley says:

> "The failure of the prospective agreement of 1912 ended in a general uproar. The unstable bases upon which it was erected satisfied neither the Peruvian nor the Chilean nations. The two chief results of this miscarriage were: in Chile the inevitable mistrust as a consequence of this absence of a forward-looking policy in its international plans, to which I have previously ad-

verted; in Peru, internal upheavals which later contributed to the downfall of the government."

The Chilean policy looking to the appropriation of Tacna and Arica in violation of the terms of the Treaty of Ancon, proceeded apace after the severance of relations in 1910. Mr. Fletcher, American Minister at Santiago, reports to the Secretary of State, November 4, 1911 (Appendix, Exhibit 98), on the proposal to incorporate Tacna and Arica into Chile in a formal way, and of the Chilean Government's intention to "stand pat":—"being in possession she feels secure and will stand firmly on this possession until it shall be legalized diplomatically by Peru or challenged by force."

The Chilean position, which had become fairly clear to most students of Latin-American affairs, was at least now no longer masked. As Mr. Fletcher pointed out, the Chilean Government now openly treated Tacna and Arica as a part of Chile, in disregard of the provision for a plebiscite. Nevertheless, in its insistence that the treaty meant something different from what it expressly states, it seeks to cover its unconscionable and illegal acts with a disingenuous appearance of morality and legality.

Among other justifications for the retention by Chile of Tacna and Arica, in violation of the treaty, has been the argument that she needed the territory; hardly a satisfactory argument from the point of view of law. The ground for this alleged need has been asserted to be its strategic necessity for the protection of Tarapaca. The argument is so unsound intrinsically and logically that it hardly deserves answer, for it would justify an indefinite continuation of an aggressive expansion, each new step in advance being necessary as a strategic protection for the previous advance. As a matter of fact, however, apart from its logical absurdity, the geography of Tarapacá is such that the Camarones

Gap, the northern limit of the province of Tarapacá, constitutes a natural frontier and defense, whereas Tacna and Arica are utterly valueless from a strategic point of view. That this conclusion does not rest on Peruvian assertion is evidenced by the testimony from Chilean sources printed in the Appendix hereto, as Exhibits 97 and 100. Apart from the immorality of the contention as a ground for illegally retaining the territory of Tacna and Arica, the contention has no intrinsic, substantial merit.

Every Chilean effort to deprive Peru of these territories having failed to discourage Peruvian persistence in demanding the integral execution of the Treaty of Ancon, the Chilean Government, in 1911, adopted military measures designed to provoke Peru into a war directly with Chile, instead of, as had been the case since 1900, to bring about a war between Peru and one of its other neighbors. This provocative effort of Chile is set forth in two memoranda of the Peruvian Minister of Foreign Affairs, transmitted to the Department of State in dispatches of the American Minister to Peru in 1911. (Appendix, Exhibits 99 and 101.) This culmination of an unprecedented series of efforts to defeat the plain words of a treaty has been said well to exemplify the national motto of Chile: "*Por la razón o por la fuerza.*"—"By right or by might."

VI

The Pan-American Congresses

Secretary of State Blaine, desiring to promote harmony among the American republics in the pursuit of their common development, invited the republics of this continent in 1889 to a Pan-American Conference at Washington. At that conference the Secretary,

acting upon a resolution of Congress which had recommended "a definite and fixed plan of arbitration of all differences now existing or that may hereafter exist between" the republics of this continent, proposed that obligatory arbitration of international disputes be among the subjects placed on the program of the Conference. Chile at once saw in the proposal an impairment of her interests, for it did not accord with Chilean policy to have international disputes, notably the Pacific question, obligatorily arbitrated.

While paying lip service to the theory of arbitration, the Chilean delegates opposed the resolution for obligatory arbitration, declaring that they "abstain from discussing or voting this project." (Appendix, Exhibit 102.)

One may contrast with this the remarks of the Peruvian delegate heartily approving a committal of the American republics to have recourse to obligatory arbitration for the settlement of their disputes. (Appendix, Exhibit 103.) In the vote on the subject, every republic voted favorably for the resolution except Chile, which "abstained from voting."

A somewhat similar fate was experienced by the resolution of that Congress for the elimination from American public law of conquest as a method of acquiring territory on the American continent. This resolution (Appendix, Exhibit 104) provided: (1) that the principle of conquest shall never hereafter be recognized as admissible under public law; (2) that all cessions of territory made subsequent to the present declaration shall be absolutely void if made under threats of war or the presence of an armed force; (3) any nation from which such cession shall have been exacted may always demand that the question of the validity of the cessions so made shall be submitted to arbitration."

This resolution, which was adopted 15 to 1 (Reports of the Pan-American Congress, 1889, Volume 2, Page 1131) again found Chile "abstaining from voting" (Appendix, Exhibit 104).

Chile's abstention from voting approval of obligatory arbitration of disputes and the abolition of conquest, though it was expressly confined to future conquests, would seem to constitute a convincing demonstration of Chilean policy, the more eloquent in that Chile was the only country that felt impelled to abstain from voting.

In the proceedings of the second Pan-American Conference at Mexico in 1901, arbitration again occupied a prominent place on the program. Again the Chilean government expressed its fears that such proceeding might infringe Chilean views of Chilean national interests. In his instruction to the Chilean Minister at Washington, the Chilean Minister of Foreign Affairs, while again referring to arbitration as "a beautiful idea," states that obligatory arbitration is "not yet ripe and at times inopportune in international conferences." He adds that "it is absolutely necessary to avoid all discussions which instead of facilitating agreements and the preservation of harmony, will on the contrary produce strained relations and displeasure among the nations invited. There were some among them that have been, as Chile was, dragged to war and that have had to annex considerable American territories as adequate indemnities."

The Minister of Foreign Affairs concluded by expressing his desire for a definition of the subjects for discussion and stated that

> "Nothing else would induce [the Chilean government] finally to accept the invitation to the Conference . . . than the inclusion in the program of the Conference of a decisive and unequivocal

proviso previously establishing that no subjects can be brought under discussion, no resolutions can be adopted and no agreements can be concluded against which a delegate of any of the republics may have raised an objection." (Appendix, Exhibit 105.)

This manifest expression of a desire to prevent the discussion of a resolution for the promotion of international arbitration is not without interest in the examination of Chilean policy toward the solution of the problem of Tacna and Arica. Coming as it did in 1901, it may explain one of the reasons for the defeat in the Chilean Congress of the Billinghurst-Latorre protocol.

The Chilean Minister in Washington, carrying out his instructions (Appendix, Exhibit 106), expresses his unwillingness to give the Chilean answer to the invitation to the Conference until the subject of arbitration, among others, was more definitely defined. The Committee thereupon assured the Chilean Minister that by arbitration was meant "prospective and in no wise retrospective" arbitration. Considerable dispute arose among the committee on program whether the Congress was to be the judge of its program or whether the separate governments could modify it. The *New York Tribune* (Maurtua, *op. cit.*, page 310) commented on the matter as follows:

> "Chile has thrown a bomb shell in the Pan-American Congress and has assumed a threatening attitude towards the United States by insisting that the Congress shall not be sovereign on the question of its program and proceedings. Notwithstanding the agreement of the United States with Mexico and the other American republics to that effect, Señor Vicuña, the Chilean Minister at Washington conveyed this ultimatum to Secretary Hay just as the Secretary was starting for his vacation in New Hampshire and later on the

same day sent the following declaration to the acting director of the Bureau of American Republics. . . .

"Chile maintains its acceptance under the conditions of the program as defined by the Executive Committee on May 6th. Program so defined Chile considers obligatory for the Pan-American Congress. Should the said program so defined be substantially modified hereafter outside or within the said Congress without the assent of all the countries invited, Chile will decide whether it will or will not maintain its acceptance."

Chile sought to give the impression that arbitration, if retroactive, would upset its conquest of Tarapacá. Such a suggestion was never, however, made by anybody and impartial observers have not been deceived by the Chilean position. What Chile really sought to prevent was the arbitration of the Tacna-Arica controversy, a fact which was clearly evident to the *New York Tribune*. In an editorial of that paper on October 17, 1901, the editor states:

"Consequent upon and subsidiary to that treaty (of Ancon) however, there are certain other matters which are not yet accomplished but pending and unconsidered issues. Arbitration of these would not be retroactive arbitration. . . . such action would not question the legitimacy of Chile's conquest, it would rather confirm it according to the terms of Chile's own treaty. We cannot believe that at the very opening of the Congress, before that body has had time to fully organize and to decide what shall be the line and scope of its deliberation, Chile will declare her withdrawal from it unless it instantly accedes to an arbitrary demand made by her and by her alone." (Appendix, Exhibit 107.)

It is not surprising to find that the Peruvian delegates strongly supported the resolution of the second Pan-American Congress on obligatory arbitration and voted

for it (Appendix, Exhibits 108 and 109), whereas Chile argued and voted against it (Appendix Exhibit 110).

The third Pan-American Congress met at Rio de Janeiro in 1906. In that Congress, the Peruvian government again suggested as a subject for the program and expressed its approval "of the subject of arbitration without either restriction or limitation." (Appendix, Exhibit 111.) The Chilean government, on the other hand, again adopted its traditional attitude of opposing arbitration. In its instruction to the Chilean Minister in Washington, the Chilean Government stated:

> "Should the United States, convinced of our firm and unalterable determination to keep within our legitimate rights, keep out of the debates—as occurred in Mexico—all matters which might be the origin of disturbing or useless discussion, and confine themselves to guiding the labors of the Conference in the direction of profitable and friendly agreements, then it is a foregone conclusion that no difficulties or obstructions will be encountered and still less that surprises will be sprung. Although we have always advocated, and still, in principle, do advocate arbitration, we have not been able to accept it in the past, nor will we accept it in the future, with reference to a question which is not within the province of this recourse."

VII

Intervention of Chile in the Relations of Peru With Other Countries

Reference has already been made to the Chilean effort to obtain possession of Tacna and Arica by entering into negotiations in 1890 with the French and British creditors of Peru, undertaking to pay them 10 million and again 14 million pesos on account of the Peruvian debts, on condition that Peru cede Tacna and

Arica to Chile, the theory being that these European countries would thus exert pressure on Peru to yield Tacna and Arica to Chile. (Appendix, Exhibit 125.)

Reference has also been made to the Treaty of Peace signed between Chile and Bolivia in 1895, supplementary to which there was included the important special treaty of contingent transfer of Tacna and Arica of May 18, 1895 (Appendix, Exhibit 112), and additional protocols of December 9, 1895, and April 30, 1896. (Appendix, Exhibits 113 and 114.)

It has also been shown that aside from the Treaty of Peace transferring the Bolivian littoral to Chile, none of these treaties was ratified by Chile. Yet the treaty undertaking to transfer to Bolivia the territories of Tacna and Arica served to detach Bolivia from the prospective entente with Argentina, with which Chile then had an important boundary dispute, and also served to give Bolivia a joint interest with Chile antagonistic to Peru, in that both Chile and Bolivia were now interested in detaching the disputed territories of Tacna and Arica from Peru. It has in fact been one of the cardinal principles of Chilean foreign policy, exemplified on the several occasions already cited, to drive a wedge between Bolivia and Peru by promising to transfer to Bolivia, as a compensation for the territories taken from Bolivia by Chile, the Peruvian territories of Tacna and Arica. That there never seems to have been a serious intention to carry out this policy to convey the territories to Bolivia, does not militate against the fact that it served Chile's purpose of securing Bolivian support in detaching them from Peru. Bolivia in this respect has been the victim of as inexcusable a policy as has been Peru.

In 1904, it will be recalled, the 1895 treaty having failed, Chile concluded another treaty of cession with Bolivia. (Appendix, Exhibit 124.) This treaty with

the subsequent secret protocol (Appendix, Exhibits 124, 136), bound Bolivia not only to aid Chile in definitely detaching Tacna and Arica from Peru, but also undertook to prepare for permanent concessions in the territory, including the railroad from Arica to La Paz, with the division of customs duties and other fiscal provisions which were to come into effect fifteen years later.

This attempt by Chile to deal with the territory of Tacna and Arica as if Chile were the permanent sovereign, with power to alienate the territory and grant concessions therein in perpetuity, naturally aroused the protest of Peru, which saw her rights under the Treaty of Ancon trampled upon without compunction. (Appendix, Exhibit 116.) For Chile to undertake to grant permanent concessions and alienate the territory of Tacna and Arica was manifestly illegal and inconsistent with the precarious and contingent nature of Chilean tenure in Tacna and Arica. Reference has already been made to the reply of the Chilean Minister of Foreign Affairs of March 15, 1905, in which, for the first time, the Chilean government develops a new theory in justification of the permanent concessions granted, by asserting that Chile was sovereign in the provinces of Tacna and Arica and enjoyed "complete and absolute sovereignty over these two provinces, with no restrictions of any kind regarding the exercise of this right and limited solely as to duration by the verdict of the plebiscite, which is to be carried out after ten years, reckoned from the ratification of that treaty, shall have elapsed. The period of ten years mentioned by the Treaty of Ancon had no other purpose than to guarantee to Chile a minimum time within which she could exercise her authority, but it did not by any means signify that at this time limit, the popular vote should be carried out."

The Chilean Government was apparently becoming more unabashed as time went on. Not only did it deny the contingent nature of the Chilean tenure, which Mr. Luis Aldunate had so clearly pointed out in 1883 (Appendix, Exhibits 46, 48), and as a mere examination of the Treaty demonstrates, but the Chilean Government undertook to assert that the ten year period after which the plebiscite was to be held was only a minimum period and that the plebiscite presumably could be held at any time—at any time suiting Chilean convenience. Even this palpable misinterpretation of the plain words of the treaty proved to be too moderate for the Chilean Minister of Foreign Affairs, for in a subsequent part of the same note of 1905, the Chilean Government for the first time advances the theory that the plebiscite was a mere empty formality and was a method employed to disguise an annexation. The Minister says:

> "All international plebiscites which have taken place during the last 200 years have merely been a method employed either for confirming an annexation when already effected or a cession agreed upon in advance. . . . The inference to be drawn from diplomatic precedent with regard to plebiscites is that stipulations entered into with reference to them are only carried out for the purpose of securing annexation while respecting popular feeling on the subject."

Thus the provisions for the plebiscite which were reached in 1883 as a compromise between the extreme positions of Peru and Chile were interpreted 22 years thereafter and for the first time either as a useless formality, and therefore not to be carried out at all, or as a meaningless formality, and therefore to be carried out fraudulently. The validity of such an interpretation of the plain words of a treaty has already been fully discussed. One can hardly refrain from

observing, however, that victory occasionally plays havoc with the morals of the victor and that the attempt to justify an illegal end often results merely in reflecting discredit on the apologist for the means.

The Argentine Republic was the one government in South America which had continuously expressed its disapproval of the Chilean policy of force in arbitrarily retaining the provinces of Tacna and Arica. Chile having orientated its new policy in 1900 with the definite view of occupying the two provinces in disregard of the Treaty of Ancon, sought as an incidental part of that policy to prevent the interference of other nations and simultaneously, by disturbing the foreign relations of Peru with its neighbors, to deflect Peru from its concentrated and continuous efforts to obtain justice with respect to Tacna and Arica, and perchance involve Peru in a war with other countries, an eventuality which might enable Chile definitely to appropriate the captive provinces without further recrimination or struggle from Peru.

As one of the first steps in this policy it was necessary to detach Argentina from her interest in and possible intervention in the question of the Pacific between Chile and Peru. After the submission of the boundary dispute between the two nations to the arbitration of the King of England, Chile concluded with Argentina in 1902, a series of treaties (Appendix, Exhibit 117), in the first of which, concluded May 28, 1902, Argentina bound herself not to intervene in the question of the Pacific

> "adhering to its own rights and respecting to the fullest extent the sovereignty of other nations without concerning itself in their internal affairs or their foreign questions,"

whereas Chile affirmed that

> "she entertains no thoughts of territorial expan-

sion, except such as may result from the carrying out of treaties now in force or hereafter to be negotiated."

In the subsequent treaty of July 10, 1902 (Appendix, Exhibit 117), Argentina committed itself to the proposition that "arbitration cannot be invoked" with respect to the treaties referred to in "the Preliminary Declaration" (thus including the Treaty of Ancon between Peru and Chile); and that Argentina would not "interfere respecting the method which [Chile] may adopt in the fulfillment of those treaties." A second article of this treaty of July 10, 1902, provided that Argentina would confine her "sphere of action to the Atlantic" and Chile would "confine her sphere of action to the Pacific."

The most inexcusable manifestation of Chilean policy with respect to Peru's foreign relations has been the attempt to embroil Peru in conflicts with Colombia, Ecuador and Bolivia. In every way possible Chilean diplomacy has supported those countries in their effort to pursue by hostile methods their differences with Peru. This has consisted in the propaganda of an anti-Peruvian press in Ecuador and Bolivia and in inciting attacks upon Peruvian citizens and Peruvian interests in those countries. In addition the foreign policy of those countries has been encouraged by Chile to assume an anti-Peruvian orientation, being supported in this development by compensatory advantages promised by Chile or by Chilean support for their aims and policies in other directions. As already observed, the theory of this Chilean policy was to embroil Peru in a foreign war or threat of war in such fashion that her interest would be distracted from the Tacna-Arica question to the point of surrendering her claims thereto.

To understand the Chilean effort to disturb Peruvian

relations with Colombia, it is necessary to recall that Peru had with Colombia and Ecuador a long-standing boundary dispute concerning the territorial rights in the region penetrated by the great affluents of the Amazon. There were three disputes of this nature, between Peru and Ecuador, between Peru and Colombia, and between Colombia and Ecuador. What Chile desired in this matter was, first, that Colombia and Ecuador should reach a peaceful agreement and unite their interests with those of Chile and, second, that Colombia and Ecuador should not come to any agreement with Peru.

To bring this about, it was necessary to repudiate the tripartite convention between Colombia, Ecuador and Peru which had been concluded in Lima in 1894 for the purpose of settling by arbitration the boundary questions above mentioned. The Congresses of Peru and Colombia had ratified this convention. It only lacked the ratification of Ecuador in order to become a binding compact. The representatives of Peru and Colombia, therefore, undertook to persuade the Quito government to ratify the convention. It was at this stage that the Chilean government undertook to exert influence on Colombia to desist from its further efforts to bring about Ecuadorian ratification of the arbitration treaty of 1894, a result which was effected by the protocols concluded in Bogota between the Colombian Minister of Foreign Affairs, Abadia Mendez and the Chilean Minister at Bogota, Herbozo. (Appendix, Exhibit 115.)

The first of these treaties, of September 29, 1901, undertook to bring about a rapprochement between Colombia and Ecuador, including a Colombian promise to vote with Chile against obligatory arbitration in the Pan-American Conference at Mexico in 1902, in exchange for which Chile offered to furnish Colombia

with a warship. The second of these protocols, of January 7, 1902, undertook to support Colombia with military supplies (Appendix, Exhibit 115). The third protocol, of January 17, 1902, undertook to concede to Chile by a secret treaty, the free privilege of bringing arms across Panama to Chile and to guarantee Colombia against any international difficulties which this concession might create for her. The fourth agreement, of January 18, 1902 (Appendix, Exhibit 115), embodies the Chilean policy of preventing the ratification of the tripartite arbitration treaty of 1894 and also binds the Chilean government to undertake to prevent the execution of the previous arbitration treaty between Ecuador and Peru of 1887 by securing the withdrawal of Spain as the agreed arbitrator under that Convention. Here it must be explained that the repudiation of the 1894 tripartite convention above mentioned revived automatically the Peruvian-Ecuadorian treaty of 1887, in which the King of Spain was designated as arbitrator. Inasmuch as Colombia had the right to adhere to the treaty of 1887, there was always the danger, as conceived by Chile, that Peru might peacefully adjust its problems with its northern neighbors. To avoid this contingency, Chile required of Colombia that she renounce her privilege to adhere to the treaty of 1887, and Colombia agreed to join Chile in obtaining the withdrawal of the King of Spain as the arbitrator under the treaty of 1887. In another protocol of January 18, 1902, the two negotiators undertook to pave the way for a Colombia-Ecuador-Chile Alliance (Appendix, Exhibit 115).

The influence of Chile on Ecuador has been greatest since the Chilean determination to acquire "at any cost" the definitive control of Tacna and Arica. Unable to prevent the submission to the arbitration of the King of Spain of the boundary question between

Peru and Ecuador, Chile nevertheless sought to encourage Ecuador in 1910 to refuse to execute the award of the King of Spain and undertook to aid Ecuador by armaments in defending her position, in disregard of the award, by force of arms. From Santiago came the information that the award about to be pronounced was extremely unfavorable to the claims of Ecuador. Chilean agents and propagandists, therefore, undertook to arouse the passions of Quito and Guayaquil, thus bringing about an outburst in Ecuador against the anticipated award. At the same time, grave manifestations were staged against Peruvian officials and private persons in Ecuador. Chile prepared and contemplated a conflict between Peru and Ecuador. She sent arms and ammunition in the steamer '*Maullin*' which was escorted by the Chilean war vessel '*Baquedano*' (Appendix, Exhibits 120 and 121). War would have been inevitable had not the governments of the United States, Argentina and Brazil, under the initiative of the United States, jointly cooperated in preventing it. The government of Peru knew in advance of the proposal for war because the Chilean Minister of Foreign Affairs, Señor Agustin Edwards, privately intimated to the Peruvian government that the war would be prevented if Peru renounced her claims to Tacna and Arica. The Chilean government was requested by the United States to use its endeavors to maintain peace.

The most flagrant efforts of Chile to disturb the relations of Peru with its neighbors occurred, however, in 1909 when Chile offered to aid Bolivia in repudiating an arbitral award rendered by the Argentine government in a boundary dispute between Peru and Bolivia, and undertook to encourage Bolivia to fight for its alleged rights by force of arms. The secret telegrams which were exchanged in this connection between the Bolivian Minister of Foreign Affairs and the Bolivian

Minister in Santiago constitute a record which diplomatic language is inadequate to characterize. These secret telegrams were obtained by the newspaper *El Comercio* and were published on July 31 and August 3, 1909. They are printed in full in the Appendix, Exhibit 118, and are self-explanatory. Chile by its offer of ammunition and money incited Bolivia to repudiate the award and to undertake a war with Peru, and only the fortunate discovery of the conspiracy prevented its successful execution. The Chilean Minister of Foreign Affairs, chagrined at the discovery of these secret documents, made a somewhat lame effort to justify or excuse the Chilean participation in the conspiracy. (Appendix, Exhibit 119.) Whether in this he was successful, the impartial observer may judge for himself.

In 1920, the Chilean government again sought to incite hostilities in Bolivia against Peruvian nationals and their property, being aided in this enterprise by the Bolivian general Montes. The latter was encouraged to believe that Bolivia's longed-for outlet to the sea was to be obtained from Chile through the development of a joint Chilean-Bolivian policy of antagonism to Peru, a policy which previous Bolivian statesmen had occasionally adopted with results that have become history. These attacks upon Peruvian citizens in Bolivia, accompanied as they were by attacks on Peruvians in Chile, are described by the Peruvian Minister of Foreign Affairs in his report to the Peruvian Congress in 1920. (Appendix, Exhibit 123.) He also shows therein that with the advent in Bolivia of the new administration of Bautista Saavedra, the pro-Chilean orientation of Bolivian policy was changed and normal relations were resumed between Bolivia and Peru. The fear of the United States that the anti-Peruvian attacks in Bolivia might lead to hostilities

induced the United States to caution not merely the Bolivian government, but the Chilean government in Santiago, thus indicating that the United States government was aware of the source of the anti-Peruvian policy temporarily then pursued in La Paz. (Appendix, Exhibit 122.)

This evidence of the Chilean policy to involve Peru in hostilities with and isolate her from her neighbors and prevent a peaceful settlement of her disputes with them exemplifies the lengths to which Chile has gone in the attempt to appropriate to herself, in disregard of the Treaty of Ancon, the territories of Tacna and Arica.

VIII

Chilenization

Reference has been made to the new orientation of the Chilean policy in 1900, when the Chilean Congress refused to ratify the Billinghurst-Latorre Protocol. That policy consisted in the adoption of forcible measures of oppression against Peruvian inhabitants and institutions in the captive provinces, the expulsion of Peruvian citizens of all classes, and the introduction by studied methods of Chileans who would become potential voters. By these methods Chile wished to lay the ground for Chilean success in any eventual plebiscite that might be held, if they were unable to avoid a plebiscite altogether. The Chilean official policy, as announced by the Chilean Foreign Office in 1905 and 1908, it will be recalled, adopted both these positions, namely, first, that a plebiscite was never really intended under the treaty and that it, therefore, need not be held and that, not being held, no violation of the treaty could be charged; and second, that, if held, it could only be construed as a meaningless formality, designed to confirm an annexation and

cession already completely effected, and that, therefore, presumably any methods adopted to insure Chilean preponderance must be regarded as legitimate. The refutation of these arguments, if refutation were needed, has already been made. Nevertheless, in order to visualize the Chilean procedure in the adoption of the policy of Chilenization, designed by forcible methods in violation of every moral principle to insure the expulsion of the Peruvian and the artificial introduction of a Chilean population, it is desirable to present certain documentary evidence illustrative of the evolution of the Chilean policy.

One of the first measures of Chilenization designed to suppress Peruvian influence, was to close the Peruvian schools. This was effected by a decree of May 14, 1900 (Appendix, Exhibit 126). As is often the case, it had been found profitable to stifle the national will and sentiment by attacking the schools and the education of youth. In addition, Tacna was created as a District of Chile, and the Court of Iquique, as mentioned above, was moved to Tacna. Increased military forces were likewise sent to Tacna and Peruvians began to be expelled.

Mr. Blanlot Holley, a Chilean patrioteer, one of the chief engineers of the policy of Chilenization and one of its most ardent enthusiasts, explains the policy of Chilenization as follows:

> "Such were the antecedents which preceded the birth of the policy termed 'chilenization' of Tacna and Arica:
>
> "If during the first decade of Chilean sovereignty in Tacna and Arica, and up to the time previous to which Chile's intention to relinquish that sovereignty was apparent—now in favor of Bolivia, through the Barros Borgoño-Gutierrez treaties, then in favor of Peru, through the Billinghurst-Latorre protocol—it may have been considered

superfluous to pave the way for the plebiscite by the assembling of a voting element sufficient to secure a victory when, through carelessness or an oversight, our government allowed the *essentials* of the plebiscite to be brought into discussion and accepted *arbitration* as a means for solving the misunderstanding which might arise, from that moment, I repeat, it became imperative to seek the confirmation of our right through the nationalization of those territories." (*Revista Chilena*, May, 1917, p. 126.)

He continues:

"The first outward sign of the adoption of the policy of Chilenization by the government of Errazuriz, was the establishment of the Court of Appeal of Iquique in Tacna. It was believed, with good reason, that this measure alone would do much to convert many families whose lives are officially bound up with a High Court of Justice or whose members exercise their calling before it. The settling of a Chilean nucleus, both numerous and representative, would enhance and improve the standing of our community, now at very low ebb owing to the prevailing opinion that the territory would be relinquished by its present occupier.

"The Governor of the Province (Intendente) Manuel Francisco Palacios, an enthusiastic defender and propagandist of our cause, set himself to travel over the entire province and to furnish the Government with statistics, on the produce of the region, and advice as to the measures which should be adopted so as to put an end to the abuses and various evils which were harmful to our cause. I have before me a copy of the Report which he drew up for that purpose. Many disappointments and hardships were the reward of this public servant for having dared to raise the standard of Chilenization *in territories which contained none but partisans of Peru and Bolivia* and where our own citizens, following the example set by our Government, were alternately cham-

pions of one or the other of these countries. Peruvians being numerically in excess and besides systematically grouped within two important associations, the Freemasonry and a society for the Mutual Protection of Working Men, our citizens were gradually attracted, step by step, by these and finally enrolled in their party. This underground activity was the chief obstacle with which, from the very beginning and for some time, our officials had to contend. It was not considered to be wanting in patriotism to openly follow a policy contrary to the interests and the prerogatives of Chile, when the example of a total disregard for or an abandonment of these principles was set by the government in Santiago." (Italics ours.)

"When to this important fact of the organization of Peruvian citizens in conjunction with ours are added those incidental to family ties and business interests acquired by Chilean residents dating from and even before the occupation, it will be seen that the nationalization of Tacna and Arica would have to overcome, not only the indifference but even the ill-will of many of our own countrymen. Why should we be surprised if the children of Chilean fathers and Peruvian mothers, born during that time or before then, should be Peruvians, when they were brought up in the belief that their birthplace would eventually return to its original sovereign? (soberano de origen).

"While refraining from any ostentatious preference and taking no part in the differences which arose between Chileans and Peruvians, foreigners at that time, with even better reasons, sympathized more with the latter than with Chileans. The greater number, having resided in the territory previous to the military occupation, had built or begun to build up positions and homes for themselves among the Peruvian people, and for this reason as well as on account of the impression which prevailed, due to the vacillating and inconsistent policy of the government, that the provinces

would some day be returned once more to Peru, it is only natural that they should be inspired with feelings favorable to that country Even though some of them held the opinion that Tacna and Arica would prosper and be more contented under our rule than if they were restored to their former owners, they naturally abstained from any action indicative of these views so as to protect themselves from the uncertainties of the future. (*Ibid.*, p. 128.)

With respect to the closing of Peruvian schools, he says:

"Palacios brought these hitherto unknown facts to the attention of the government and solicited and obtained permission to close the Peruvian schools, a measure which brought upon him the odium of even his own countrymen and that of neutrals, due to the exaggerated sentimentality of some and the lenient views of others. It occurred to none to consider the transgressions of Peruvians as a revolt against constituted authority; they were looked upon as harmless manifestations. It is, however, a fact that such behavior tolerated in the conquered people was slowly producing, in the coming generation, a feeling of hatred and contempt for Chile and of pity and love for Peru." (*Ibid.*, p. 130.)

This change in the policy of the Chilean government naturally aroused apprehension in Peru, coming especially at a time when the Billinghurst-Latorre Protocol for the rational solution of the problem of the plebiscite was presumed still to be under serious discussion in the Chilean Congress. It naturally aroused the inference that arbitrary methods were to be adopted to force a solution in violation of the protocol and the treaty. This policy of Chile induced the first of a series of forceful yet moderate notes of protest from the Peruvian Minister in Santiago, Cesareo Chacaltana. In the first note of November

14, 1900 (Appendix, Exhibit 127), Señor Chacaltana states to the Chilean Minister:

> Your Excellency's government, apparently in an endeavor to correct certain inexplicable omissions, has passed a series of laws, some of which have been executed and others are in process thereof, relating to the political and administrative life of the provinces of Tacna and Arica, whose inhabitants, refractory to any change in their nationality, are being induced to alter their intentions respecting their future status.
>
> This difficult and laborious enterprise has been going on, with rare tenacity of purpose, for the last ten months; that is to say six years after the expiration of the time limit set for the provisional occupation by Chile, in conformity with the Treaty of Peace of 1883; eight years after negotiations were begun, at the initiative of Peru, to determine the manner and conditions for the plebiscite; seventeen years after the signature of the above-mentioned Treaty, and some twenty years since the provinces in question came under the government and control of the Chilean authorities. Your Excellency's government seems apparently to have set itself the task of bringing about, in a few months, that which was not attempted nor could be achieved during twenty years.

He next states that these measures created a feeling of serious apprehension in Peru, causing unnecessary irritation, and have aggravated a situation already charged with suspicion and doubt as to the possibility of reaching a final settlement, which if left unsettled could only estrange the two peoples. After enumerating the objectionable measures, showing that they were contrary to the laws of Chile and to the spirit of the treaty, and of every sentiment of right, he protests against them and urges the Chilean government to ratify the Billinghurst-Latorre Protocol.

On December 15, 1900, no reply having been made to his former communication, Señor Chacaltana again requested a reply, observing that the objectionable measures have not only been carried out, but that new ones were being devised and put into execution and concessions of a permanent nature granted in a territory the sovereignty of which at best was still undetermined. (Appendix, Exhibit 128.)

On December 18, 1900, the Chilean Minister of Foreign Affairs excused the failure to reply on the ground of a political crisis and the ill-health of the President. (Appendix, Exhibit 129.) He promised to undertake to show that the measures "of an administrative character" taken by the Chilean government in Tacna and Arica had been misconstrued by the Peruvian government.

No further reply having been received, however, Señor Chacaltana on December 24, 1900, addressed to the Chilean Minister of Foreign Affairs another note (Appendix, Exhibit 130) urging that the Billinghurst-Latorre Protocol be promptly ratified, and pointing out that the measures of Chilenization, prosecuted with continued vigor in the captive provinces, were making it more difficult to arrive at a reasonable solution of the problem; hence the special reason for a prompt ratification of the Protocol. He protests especially against the granting of long-term concessions in the territory of Tacna and Arica, as if Chile were the permanent sovereign, a status quite contrary to the contingent and limited character of the Chilean control of the territories in question.

On January 19, 1901, five days after the rejection of the Billinghurst-Latorre Protocol by the Chilean Congress, the Chilean Minister of Foreign Affairs finally answered the notes of protest of Señor Chacaltana (Appendix, Exhibit 131). He expresses the hope that

the explanation will convince the Peruvian Government that the acts of the Chilean Government "respond to the lofty sentiments of rectitude and respect for the rights of others, and that they are inspired in the strict fulfillment of its duties, among which the first of all is the defense and safeguarding of its own rights."

He then presents an attempted explanation, minimizing the importance of the Chilean measures, and declaring that "none of those measures imply hostility to or ignorance of the rights of Peru; nor do they conflict with the stipulations of the treaty of Ancon. The greater part of them are destined to promote the betterment of the territory, to procure the well-being of its inhabitants, and to assure their prosperity and future development."

"By these legitimate means, by applying her laws and keeping within the bounds of the treaty of Ancon, Chile seeks to strengthen her expectation to the ultimate dominion over Tacna and Arica. She will not omit any effort in order to carry out the mission which, as regards the said territories, was imposed upon her by the treaty of Ancon, so as to deserve the confidence and the gratitude of its inhabitants."

In answer to the charge that the government of Chile appeared inclined indefinitely to postpone the settlement of the conflict, he says that "the signing of the protocol (Billinghurst-Latorre) is the most conclusive proof to the contrary; and that if the said protocol has not received the sanction of Congress it is no fault of the executive." And he then takes advantage of the occasion to officially inform the Government of Peru that "the recent resolution adopted by the Chamber of Deputies on again taking into consideration the Billinghurst-Latorre Protocol has ended an uncertain situation that paralyzed and retarded the negotiations which both governments

should undertake in order to solve the problem in reference to the territories of Tacna and Arica. The Chamber of Deputies has not approved the protocol of April 16, 1898, because it deems that it should be modified in some respects, and it has resolved to return it to the government so as to obtain the necessary modifications, opening for this purpose fresh negotiations with the Peruvian Foreign Office."

Señor Chacaltana could not accept the explanation of the Chilean Government as conclusive evidence that that government was acting "within the bounds of the treaty of peace" or that it was applying its laws "in a legitimate manner"; neither could he accept the action taken by the Chamber of Deputies as a means calculated to facilitate an early solution of the controversy. Peru's case was perfectly clear and simple, and he resolved to prove to Señor Bello Codecido, Chilean Minister of Foreign Affairs, with the Constitution and laws of Chile before him, that every one of the measures of Chilenization to which Peru objected was in direct opposition to the laws and practice of Chile, and moreover, that they all more or less tended to pave the way for a permanent possession by Chile or for the carrying out of the plebiscite under unfair conditions to which Peru could never consent to be a party.

On January 30, 1901, he, therefore, addressed a fresh note to the Foreign Office (Appendix, Exhibit 132), stating in his opening paragraph that as "the explanations given have failed to destroy the justice of the claims pressed by Peru, I am obliged to insist on them." He, therefore, once more goes over the whole ground, and this time he replies to Chilean sophistry with Chilean law, the Chilean constitution and Chilean statements and precedents, and he expresses his regret at having to place on record the fact that he deplores

observing that Chile, instead of undoing the wrong she has done, confirms every one of her illegal acts and maintains them in force.

He emphasizes the fact that these actions and measures were undertaken solely for a specific purpose, and denies that they respond to any legitimate demand for the welfare of the inhabitants of the territories. To this effect he quotes a remarkable passage of the report of the Chilean Foreign Minister presented to the Congress of 1900, reading:

> "In the meanwhile, the government, making use of the rights that the said treaty of Ancon concedes, has proceeded to adopt with respect to Tacna and Arica *a series of measures* that shall place Chile *in a favorable position* for the holding of the plebiscite"; and he adds, "the concentration of military forces has, consequently, had this chief and professed object, and we already know what is to be expected from the intervention of armed forces in the matter of a popular vote." (Italics ours.)

And as Señor Bello Codecido, the Chilean Minister of Foreign Affairs, dismissed this charge of possible military intervention by stating that "*the moment has not yet come for the taking of the plebiscitary vote,*" the Peruvian plenipotentiary reminds him that

> "This, however, is not the opinion of my government. That moment fell due, according to the Peace Treaty, in 1894. This explains the exertions made by Peru, ever since 1892 to the present date, to secure the covenanting of some agreement according to which the plebiscite could be held. And precisely because the plebiscite has been due ever since 1894, explains why my government now considers it imperative to bring back legal conditions to what they then were so as to be able to hold the plebiscite."

And further on, again referring to those measures

which Señor Bello Codecido declares as having been dictated by the well-being of the territory and its inhabitants, Señor Chacaltana says:

> "Peru is not discussing here the advantages or the disadvantages of the measures, in so far as the prosperity of the region is concerned. In seeking their abrogation she has ample grounds, in addition to their glaring contradiction with the Peace Treaty, in the very apparent purpose which has inspired them."

And he concludes by declaring that his government is determined to maintain the spirit of peace and harmony as heretofore, notwithstanding the cruel deceptions of the past, but that it demands as a pledge of justice and equity the revocation of the measures adopted with regard to Tacna and Arica, so as not to give to the plebiscite the character of an imposition. And to prove that the views of his government are not by any means exaggerated in this respect, he quotes the words of the Chilean Deputy for Osorno, who at a then recent sitting of the Chamber expressed himself in the following terms:

> "I must declare that, notwithstanding the fact that the transfer of the Court of Justice, the closure of the Peruvian schools in Tacna and Arica, and the quartering there of a large part of our army have been so greatly praised, I am not among those who approve of the adoption of such measures, and this because I know that it is impossible to *nationalize* a territory in a few days when it has been abandoned for nineteen or twenty years. To obtain the nationalization of those territories, we should have begun by making Chilean administration there more congenial by the appointment of really capable officials."

Señor Chacaltana had previously in a note of January 19, 1901, (Exhibit 85) expressed his views that by arbitrarily postponing the plebiscite and artificially altering

the conditions prevailing in Tacna and Arica, in 1894, Chile was so materially violating the treaty that a plebiscite held under these altered conditions could not be participated in by Peru. This argument, which responds to the plainest dictates of ordinary reason, is still applicable, on which account it may be desirable to quote the words of Señor Chacaltana:

> "The provinces of Tacna and Arica," he said, "should have determined their future status in 1894, when the rights of Chile in her capacity of possessor expired, and when their legal status had not been altered. The government of your Excellency has had no privilege to alter violently and substantially that condition, with the object of seeking in a different condition, brought about after many years, the probabilities of success that the former situation did not offer it. It would be as unfounded to sustain that Chile has been empowered to delay the plebiscite for seven or ten years after 1894, in order to create a propitious condition favorable to her interests, as it would be to affirm that she had a right to do the same and for a like object for a hundred years or for an indefinite time. From this to support in times of perfect peace the right of conquest would be but a single step. For the plebiscite to satisfy the demands of justice and of the convention from which it derives, it is, therefore, indispensable to bring conditions back, as far as possible, to the state in which they were in 1894; it is necessary for this reason to revoke the measures detailed in my note of November 14th, so as to reestablish the legal position then existing.
>
> "Peru's condescension to accept any agreement cannot be unlimited; her presence at the plebiscite cannot be of a merely nominal nature; her role on that occasion cannot be that of a simple spectator. As an autonomous entity, jealous of her dignity and of her rights, yet at the same time respectful of the dignity and rights of Chile, she has only claimed the strict fulfillment of the

treaty of peace, by means of friendly agreements proposed by her, or by recourse to arbitration when the conclusion of agreements became impossible.

"Negotiations are not being carried on, as some have unjustifiably supposed, between victor and vanquished; the rights of Chile as a victor expired seventeen years ago, with the ratification of the Treaty of Peace concluded by both countries. Since then it is a question as between two States entirely free, of unequal material strength, indeed, but of equal, sovereign power as regards the very high conceptions of right and as regards the laws that regulate present-day civilization.

* * * * * * *

"Whatever action the Government of Chile may see fit to take in the future in regard to Article 3 of said Treaty, Peru is not disposed to take part in the plebiscite under conditions that practically imply its infraction.

"Peru, finally, reserves to herself the right to decline fresh negotiations on the plebiscite, unless the legal condition existing on the 28th of March, 1894, is reestablished in Tacna and Arica by the revocation of the measures therein adopted."

It is unfortunately necessary to record that the Peruvian protests had not the slightest effect on the policy of Chilenization, except perhaps to intensify it. The manifest intention of Chile to treat with contempt the Peruvian protests against her violations of the treaty and the falsification by artificial methods of any plebiscite which might be held, induced the Peruvian Government, as already observed, to sever diplomatic relations with Chile. The hopelessness of persuading the Chilean Government to heed in this matter the ordinary principles of right and morality discouraged the Peruvian Government in further persisting in its continuous effort of nine years to bring about a reasonable agreement on the holding of the plebiscite.

Among the centers of alleged Peruvian influence which were most severely attacked and oppressed by the policy of Chilenization, were, in addition to the schools, the churches and ministers of religion. Tacna and Arica had from the earliest days depended upon the Bishopric of Arequipa, Peru, from which center the priests were sent out. This seemed to the Chilean Government an undesirable status, and they sought to change it. Notwithstanding the frequent and insistent attempts undertaken by the Government of Chile with the Holy See, to induce it to alter the ecclesiastical jurisdiction of the territory of Tacna and Arica, its endeavors invariably failed. In the impartial and independent judgment of that eminent and reputable authority, which had no interest whatever in favoring Peru, the lawful jurisdiction of the Bishopric of Arequipa was sustained, a fact which demonstrates that it rejected the idea that Chile had secured the sovereignty of the above-mentioned provinces.

As an aid to this effort, the Chileans undertook a rigorous campaign of ousting the Peruvian priests from their churches, and when these priests undertook to hold services outside the churches, unusually harsh and oppressive measures were initiated against them. These measures, followed often by measures of expulsion, claimed an alleged justification in the fact that the Peruvian priests maintained in the people a loyalty to the Peruvian fatherland, which above all was to be prevented. The protest of the Archbishop of Lima to the Bishop of Arequipa against some of these Chilean measures, are presented in the Appendix, Exhibit 133.

During the progress of the negotiations of 1908 of Dr. Puga Borne and Señor Edwards, Chilean Ministers of Foreign Affairs, with Señor Seoane, the Chilean Government proceeded unremittingly in its policy of

Chilenization. It suspended the Peruvian newspapers, having already closed the schools, attacked Peruvian clubs and places where Peruvians associated, and imported a large military and civil bureaucracy. The Peruvian population, nevertheless, seemed to maintain its loyalty to Peru, a fact which made it appear necessary to the Chilean Government to undertake a new and more effective campaign of Chilenization. It thereupon founded a so-called "Nationalization Committee for Tacna and Arica." The function of this committee, which held its meetings in the Foreign Office at Santiago under the chairmanship of the Minister of Foreign Affairs, was "to insure Chilean success in the plebiscite." The secret minutes of that committee were obtained by the newspaper *El Comercio* and were published in its editions of March 6th and 7th, 1910. The minutes are printed in the Appendix, Exhibit 134, and repay careful examination. The alleged necessity for further measures of Chilenization are presented by Señor Blanlot Holley, one of the most ardent promoters of Chilenization. He states in the *Revista Chilena* for June, 1917, page 318:

> "This slight sketch of the diplomatic action of the Government will be sufficient to give a clear idea of the singleness of purpose in both thought and deed with which the policy of Chilenization was pursued during the previously mentioned interregnum.
>
> "But notwithstanding all that had up to that time been done, nor all that could still be effected—so far as measures of a permanent character were concerned—it was apparent that no hopes could be entertained, for at least another one or two generations, that the Chileans even when added to the foreigners, would exceed the number of Peruvians."
>
> "Maximo Lira [Governor of Tacna] could accomplish no more than he already had, nor supply the

deficiency. Matters would have to remain as they were or recourse would have to be had to the only solution demanded by the circumstances; to artifically concentrate in the province a sufficient number of electors so as to meet the requirements of the plebiscite.

"The *status quo*, however, contained an element of danger, for since Peru could at any time demand the fulfillment of the Treaty of Ancon—according to her declared interpretation of the document, an interpretation weakly acquiesced in by our Government—were Chile unprepared, her defeat in the plebiscite would be certain, unless she consented to stoop to the corruption and bribery characteristic of her domestic elections and so secure a degrading victory, harmful alike to the good repute and to the sovereignty of the country."

Maximo Lira, the Chilean representative in the abortive 1895 negotiations, was the Governor of Tacna to whose vigorous hands was entrusted, in 1908, the effective prosecution of the work of Chilenization, with its resulting persecution of the Peruvian inhabitants, expelling them, expropriating their property, and colonizing the land with Chilean subsidized immigrants. In the session of the Nationalization Committee of October 22, 1908 (Appendix, Exhibit 134), Lira states: "We have trebled the number of Chilean votes which previously stood at 425, and we have compelled a considerable number of Peruvian laborers employed on the Arica-LaPaz Railroad, to leave the country, which has implied the loss to Peru of some votes. The continuation of this work will require an increased number of officials and this will eventually secure for us the required number of votes, and enable us to face the verdict of the plebiscite with security. So long as we preside over the proceedings," stated Lira, "I guarantee a successful issue."

The meeting also discussed (Appendix, Exhibit 134) the best means of spending the 500,000 pesos which had been appropriated by the Chilean law of 1906 for propaganda work in execution of the policy of Chilenization. Lira states in the meeting of October 22, 1908, that the acquirement of real estate for the purpose of colonizing the land with Chilean families had absorbed a considerable part of this fund. He points out that the voting population, before the introduction of "the last batch of 1,040 Chilean laborers" consisted of the following: Peruvians, 2,326; Aliens, 538; Chileans, 425. It seemed especially necessary to adopt drastic measures to alter this ratio. He added, with respect to the balance on hand of 300,000 pesos, that he was keeping this "in reserve" to acquire real estate and to settle Chilean families, for which he was employing the services of intermediaries, "so that Peruvian suspicions may not be aroused, as has been the case up to the present." The commission thereupon resolved:

> "That the Governor of Tacna proceed with his plan of acquiring real estate and the settlement of Chilean families, which latter would be furnished by the Commission." It was also decided "that Chilean labor should alone be employed on the work of this railroad" (the Arica-La Paz Railroad).

In his report to the commission, of November 20, 1908 (Appendix, Exhibit 134), Lira reported "that he had completed his scheme for the colonization of Tacna and Arica. . . ."

"He proposed that the government by means of third parties should acquire or expropriate land in the province, which would then be appropriated for colonization purposes, this being the most efficacious means of nationalizing the territory and of planting therein the required voting power necessary to assure the success of an impartial plebiscite, which he advises should be

held." Lira then presents some interesting ideas concerning impartiality, which appears to consist of packing the country with Chileans and expelling the Peruvians.

It was at this time, it will be recalled, that Dr. Puga Borne, in his conversations with Señor Seoane, Peruvian Minister at Santiago, expressed a desire "to show the true sentiment of the people, and of the government (of Chile) toward Peru" and in his telegram to the Chilean Legation in Washington, May 1, 1908, declared that "this proposal which clears Chile of the imputation of responsibility for preventing the solution of the difficulty, has been made in the form of an agreement" (Maurtua, op. cit., p. 330). But in his private confidential correspondence with the Chilean Minister, in Washington, we find the following remarks (Exhibit 135):

> "These negotiations will, at all events, be in harmony . . . with the policy of the Government . . . that any settlement can only be on the basis of *preserving to Chile the whole territory* whose sovereignty and definite nationality this Department considers *practically assured in our favor* . . . Should Peru reject it (an agreement) we will initiate negotiations . . . bearing upon the conditions for the regulation of the plebiscite, respecting which we will accept none but *conditions of equality which will be tantamount to assuring our triumph* . . . as a result of the diligence which we are exercising *to enlist Peruvian goodwill and that of foreigners* and increase the number of Chilean inhabitants in the territory." (Italics ours.)

At the moment when Foreign Minister Edwards, in 1909, was presenting his project for a plebiscite under Chilean control, Maximo Lira, Governor of Tacna, was reporting to the "Nationalization Committee" in Santiago, after stating the number of Peruvians in the provinces:

"But is it a foregone conclusion that these 2,661 Peruvians . . . would all cast their votes in the plebiscite? To believe so would be a mistake . . . for many of them would have to go long distances to register their vote, losing much time and money. . . . Besides, as the Peruvian native is essentially timorous by nature, it would be extremely easy to intimidate him, making him believe, for instance, that he is being called upon to undertake his military service, or for the purpose of increasing his taxes and giving him to understand that his life would be imperilled by travelling over certain roads . . . At any rate it is imperative to correct the grave mistake . . . of utterly disregarding the importance of the rural populations. . . . Our position with respect to the plebiscite would be extremely favorable if we could obtain these three things: right to issue the voting ticket; a secret ballot and the sitting of the qualifying Boards and the establishment of the polling stations only in the Chief Towns of the Department." (Exhibit 159.)

Blanlot Holley, the celebrated Chilenizer above mentioned, presents his views on this interesting experiment in the following passage (*Revista Chilena*, July, 1917, p. 418):

"To these measures, others were added later which consolidated the Chilenization of the territory and at the same time secured its evacuation by the Peruvians.

"Before I mention those of a permanent nature, I will first describe so as not to alter the sequence of the innovations, one of the most important, from the point of view of an increased population, although it had the grave defect of being to a certain extent unremunerative and to have cost as much as some of the irrigation schemes to which I shall refer later when dealing with the present and future of Tacna. I allude to the contracts made by the Government for the supply of laborers for the Arica-LaPaz railway, who would

be also eligible to vote in the plebiscite, and who were brought, at government cost, from the south, for the company engaged in building the line had on hand the necessary men of other nationalities, especially Bolivians who came from the Highlands in great numbers, attracted by the high rate of wages. This decision, by the way, was the only one which, owing perhaps to its special characteristics or to having escaped the knowledge of the Peruvian Government, brought no protest from it.

"The cancellation of the appointments of Peruvian inspectors in the Custom House of Arica, the ousting of men of that nationality whose calling is connected with the sea—such as longshoremen, porters, boatmen and the owners of launches and other small craft—upon breaking any of the regulations issued by the maritime authorities—a frequent occurrence with men of this class—and their gradual substitution by others of Chilean nationality; the establishment of industrial organizations subsidized by the Government, such as shoe and cigarette factories in Tacna; the closure of the parish church of San Ramon upon the death of its saintly Vicar, Father Andia, and the expulsion of the Peruvian priests, who upon the closure of their church had remained behind to plot against the authorities while secretly exercising their office—all these measures were the subject of energetic protests on the part of the Peruvian Government which are contained in its notes of the 30th of September and 23d of December, 1909."

He adds, concerning the Chilean policy in 1909 (*Ibid.*, p. 294):

"Briefly, therefore, the international policy of the Santiago (Moneda) government was irrevocably committed to the following: a short term plebiscite, *bilateral* in case the Peruvian Government accepted the bases proposed by ours; *unilateral* if it refused to take part in its celebration. *In any case, arbitration to be excluded.*"

And he presents, as of 1908, an interesting table of statistics concerning the respective national interests in the territory:

> "Toward the end of 1903, when Maximo Lira was appointed Governor (Intendente) of Tacna, the Chilean population consisted, with the exception of the Government officials, almost entirely of indigent persons. There may have been a few who, perhaps, having settled at the beginning of the military occupation, had managed to acquire a home of their own, but 'one swallow does not make a summer.'"
>
> "Five years later, in 1908, the register of urban and rural property showed the following progress:

Nationality of owners	*Urban*		*Rural*		*Total*	
	No.	*Value*	*No.*	*Value*	*No.*	*Value*
Chilean	147	902,887	25	256,600	172	1,159,487
Peruvian	597	3,501,301	815	3,099,824	1412	6,601,125
Bolivian	16	99,592	55	272,090	71	731,682
Foreigners	156	1,975,503	12	187,800	168	2,163,303
	916	6,479,283	907	3,816,314	1823	10,295,597

The Chilean properties belong to the following:

Private owners	143	839,087	24	245,600	167	1,084,687
Government	3	50,600	1	11,000	4	61,600
Municipal	1	13,200	...	.....	1	13,200
	147	902,887	25	256,600	172	1,159,487

NOTE: Values given are in "pesos" (Chilean).
(*Revista Chilena*, November, 1917, p. 295).

The encouragement given to the policy of Chilenization had produced, as is here shown, gratifying results. Its development was merely a question of time.

At this time there was voted a Chilean law of colonization of Tacna and Arica which granted the transportation expenses, land, tools and pecuniary subsidies to induce Chilean immigration into the territories (Appendix, Exhibit 134). An important credit was voted secretly for the work of expropriation. Industrial enterprises were begun with the concurrence of the Chilean government to ruin the Peruvian enter-

prises. A Department of Tarata was created in the improperly occupied Peruvian territory. Peruvian nationals were enrolled in the Chilean Army, a measure which was intensified in 1912, and the churches were closed. The Peruvian Minister, Dr. M. F. Porras, protested energetically against this disloyal policy which placed the Peruvian provinces outside the ordinary law, and was designed to falsify the basis of the popular vote. In a note of September 30, 1909 (Appendix, Exhibit 138), he said: "It was agreed that these districts would be governed by Chilean laws during the occupation . . . to deprive a people of the means of carrying on their religion is to suspend one of their most elementary rights . . .; the colonization law is essentially contrary to the stipulation of the treaty."

And in another note of December 23, 1909 (Appendix, Exhibit 139), he added:

> "The Peruvian workers who, in Arica, earned their living as boatmen or as shore laborers, have been forced to discontinue these trades. Numerous groups of these men have been obliged to emigrate from their native land, where, by degrees and systematically, their fellow-countrymen are deprived of the very right to work, and of the protection of the laws. Foreign merchants deem it inconvenient, or a disadvantage, to employ Peruvians, because these are antagonized in the Customs House; as a general rule for them to come in contact with a Government official, or with any one who is even remotely connected with the administration, is equivalent to raising obstacles in the carrying on of their business, which are exteriorized in animosity towards and persecution of all persons who desire, at any cost, to maintain their loyalty to Peru.
>
> "The same occurs in Tacna. Factories are being built, or their erection is being contemplated with Government aid, for the purpose of engaging in competition with Peruvian industries already established many years back."

The Chilean government, imperturbable, paid no attention to these protests, but on the other hand, intensified its persecutions. The victims of these were largely the Peruvian ministers of religion. (Appendix, Exhibit 137.) The measures taken against the Peruvian ecclesiastics were entirely illegal and a Chilean Senator, Abdon Cifuentes, criticising these measures, observed: "These provinces are, by virtue of the treaty of Ancon, subject to the law and authority of Chile. . . . The administrative authority has no other rights even against criminals than to bring them before the courts. . . . If the Governor thought these ministers were guilty, why did he not have them prosecuted before the courts as was his duty and his only right? Is it because they are Peruvians? This would be an additional reason to avoid abuses of power. . . ."

The continuous and gradually increasing measures of severity thus adopted in execution of the policy of Chilenization, finally moved the Peruvian government again to suspend diplomatic relations with Chile in its note of March 19, 1910 (Appendix, Exhibit 140).

But Chilenization went on uninterruptedly and induced continuous Peruvian protests. (Appendix, Exhibit 141). Peruvians were drafted into the military service under the allegation that having been born in Tacna and Arica they were now Chileans. In 1912 the intensification of this campaign effectively began. It is described by Señor Blanlot Holley in the following passage (*Revista Chilena*, December, 1917, p. 408):

> "It was only during the middle of 1912 that it was thought the proper time had come to resume the policy of Chilenization, no longer, however, employing the methods of the past, but by exercising our right by putting in force the electoral and military laws.
>
> "This measure practically amounted to the

definite incorporation of the territory, legally and constitutionally, while it could not be said that Chile, in adopting this decision, was taking advantage of her military strength, superior to that of her opponent, since the Treaty of Ancon held the territory to be subject to Chilean laws and Chilean authorities.

"It cannot be said that the solution of the problem was greatly advanced by these measures; however, the determination to uphold our rights to their fullest extent necessarily implied our definite rejection of our adversary's persistent endeavors to limit them.

"Conscription would doubtless drive out the men born in the territory who were unwilling to comply with its requirements. And this is, indeed, what happened. However, many men on being drafted who, owing to their subservience to paternal or maternal authority, or owing to lack of contact with their countrymen in the south, had been reluctant to declare their true nationality, changed both their views and feelings during the period of their military service. Some decided to remain in the army after their term had expired, while the attitude of others was completely changed, even to the extent of severing all relations with those so-called Peruvians who broke or evaded compliance with the law by flight. This was apparent during times when, the enforcement of the law having been relaxed and the danger of compulsory service being withdrawn, some of the evaders returned to the province."

In 1918 the persecutions began to become unbearable. Peruvians were maltreated in the most barbarous fashion. The Peruvian Consul in Iquique was assaulted with the connivance of the Chilean authorities and forced to leave the country, the Archives of his Consulate scattered, and the Peruvian population in general terrorized and expelled. It is believed that the reports made to the Department of State by its

regular and special representatives in Chile, including the United States Consuls in Tacna, like Mr. Cameron, will amply confirm these public manifestations and evidences of Chilean policy.

The unprecedented assault on its Consul at Iquique induced the Lima government to withdraw its consular representation in Chile and to issue a statement of the facts to foreign countries, as was done in a circular note to Peruvian Legations abroad under date of December 2, 1918. (Appendix, Exhibit 142.) The Chilean Minister of Foreign Affairs, in a note of December 6, 1918, undertook to sustain all the unusual and exceptional measures of Chilenization, on the ground that the territories were, by the treaty, subject to Chilean law. He overlooked the fact, which even Foreign Minister Vergara had not overlooked in 1905, that however wide the Chilean legislative powers were, they were limited in duration and necessarily were limited by the eventuality of an unsuccessful plebiscite. The claim of unlimited sovereignty, therefore, under which these measures in violation of the treaty were undertaken, is entirely unsubstantial, for there can be no unlimited and permanent sovereignty in a territory in which a plebiscite may at any time terminate, and should in 1894 have terminated, it. This limited nature of the Chilean control, which is not sovereignty in any sense, but military occupation, is the most effective answer to the Chilean contention that their control enabled them to grant permanent concessions over the real estate and to adopt any measures in the territories they saw fit.

Another protest against the continued persecution of Peruvians was made by the Peruvian Minister of Foreign Affairs in a circular of December 28, 1918 (Appendix, Exhibits 144 and 145).

With respect to the situation in Tacna and Arica,

the Peruvian government, in a circular to the legations of Peru abroad, January 12, 1919 (Appendix, Exhibit 143), made a complete reply to the Chilean explanations.

In a circular to the legations of Peru abroad of December 13, 1919 (Appendix, Exhibit 146), the Peruvian Minister of Foreign Affairs again calls attention to the violent methods of Chilenization adopted and the persecution of Peruvians involved therein. Protest to foreign countries was now the only method left to Peru (Appendix, Exhibit 146) to call attention to the facts. It can hardly be doubted that the pressure of public opinion thereby created ultimately induced the Chilean government to listen to the suggestions of President Harding for a meeting in Washington, which resulted in the protocol of arbitration of July 20, 1922.

Further evidence as to the barbaric nature of the Chilean persecutions of everything Peruvian is furnished by the final exhibits printed in the Appendix to this Case. The originals will be furnished to the Honorable Arbitrator, if desired.

Since 1918, and with increasing vigor during the last few months, Chilean persecutions and expulsions of Peruvian citizens have continued. In the evident belief that a plebiscite might be ordered by the Honorable Arbitrator, the Chilean Government appears even now to desire to remove from the provinces as many Peruvians as possible. The batch of twenty-one affidavits printed in the Appendix as Exhibit 158 sustains the assertion that Chilean persecutions, notwithstanding the protocol of arbitration, continue unabated. A financial statement prepared by the Controller of the Peruvian Ministry of Foreign Affairs, Sr. S. E. Villanueva, shows that during the years 1918 to 1922, the Ministry of Foreign Affairs spent £32,430 in the repatriation of Peruvian citizens expelled from Chile.

Exhibit 147 consists of a letter written to the President of Peru by a well-known engineer, Señor Valverde, on January 18, 1919, stating the exact proceedings which had occurred in connection with his own persecution.

Exhibit 148 consists of a report made by a Peruvian official, the Governor of Ticaco, of the province next to Tacna, giving an account of the methods adopted by the Chileans in their persecutions. The atrocities committed would be almost unbelievable were they not a continued experience and confirmed from many sources.

Exhibit 149 consists of an expulsion order of January 11, 1923, against a well-known Peruvian citizen, Antonio Mollo. Exhibit 150 consists of the final paragraph of a letter addressed January 26, 1923, by Señor G. A. Pinto, Peruvian Regional Deputy for Tacna, giving an account of one of the methods adopted by the Chileans to give the impression that their coercive methods were popular with the people.

Exhibits 151 and 152 consist of telegrams from the Peruvian Prefect of the Tacna department nearest the border, called Tacna Libre, February 24, 1923, reporting to the Minister of Foreign Affairs the hardships endured by certain expelled Peruvians.

Exhibit 153 consists of the voluntary testimony given to the Prefect of Tacna Libre, April 6, 1923, by two Italian subjects concerning what they had witnessed with respect to the persecution of Peruvians.

Exhibit 154 consists of another telegram from the Peruvian Prefect of Tacna Libre, residing in Locumba, concerning Chilean persecutions and even invasions of Peruvian territory in the pursuit of persecuted Peruvians.

Exhibit 155 consists of a certificate issued by the manager of the Bolivia Telegraph Company to the

effect that a faithful employee, Roberto Nalvarte, was peremptorily ordered to leave the Province of Tacna "on account of his being a Peruvian citizen."

Exhibit 156 consists of a declaration made before the Mayor of Ilabaya by a Peruvian citizen, another employee of the Bolivia Telegraph Company, concerning his expulsion because of his Peruvian nationality and giving the reasons for his inability to obtain a certificate of the facts from the manager of the company.

Exhibit 157 consists of a newspaper clipping from *La Crónica*, April 28, 1923, concerning the tortures inflicted upon the Peruvian citizen, J. P. Rueda, immediately prior to his expulsion from Arica.

Exhibit 158 consists of a batch of twenty-one affidavits by substantial citizens of Peru expelled from their homes and occupations in Tacna and Arica during recent years. Under well-established principles of international law, Peru has a substantial claim against Chile for the indemnification of these victims of Chilean policy.

These exhibits will furnish graphic testimony of the methods adopted by the Chileans in the execution of their so-called policy of Chilenization.

IX

Conclusions

The above recital will, it is believed, have made it clear that the Chilean historian, Bulnes, and the Chilean Senator, Ross, were justified by the facts when they asserted that the failure to hold the plebiscite had been due to Chilean opposition. It would seem that nothing could be clearer than that Chile arbitrarily interposed obstacles of every kind against the holding of an honest plebiscite at the time contemplated in the treaty and has since that time by methods of Chilenization in the captive provinces and by the

effort to disturb the relations of Peru with her other neighbors, done everything possible to obtain possession for herself, in disregard of the Treaty, of the provinces of Tacna and Arica. The Chilean government has sought to explain and justify its arbitrary attempt to evade the execution of the treaty by asserting, in 1905, that she obtained sovereignty over the territories in 1883, subject only to its being divested by a plebiscite vote against her, a condition which could never be met until a plebiscite was held and that therefore Chilean sovereignty is unencumbered; and by asserting in 1908 that the plebiscite was a mere formality never intended to be held and if held was merely a means of giving formal effect to a cession which had already been completely and legally made.

It has already been suggested that these contentions appear to have the character of a somewhat strained rationalization to justify that which cannot be justified; but if anything more were needed to refute these assertions than the mere reading of the words of Article 3 of the Treaty, which distinctly provided for a temporary occupation for ten years, at the end of which time a plebiscite was to be held to establish the permanent sovereignty, it would be furnished by the negotiations which preceded and followed the Treaty of Ancon.

It will be recalled that at the Arica Conferences of 1880, the Chilean terms were, first, a cession of Tarapacá and second, an indemnity of 20 million pesos, guaranteed by a pledge of the Peruvian provinces of Tacna and Arica, which would be retained until the payment of this sum by Peru. The same terms were advanced in the Lima Conferences of 1881. In 1882, on the occasion of United States mediation, the Balmaceda-Trescot protocol provided again for a cession of Tarapacá and an indemnity guaranteed by the retention in pledge of Tacna and Arica.

There is no evidence that the Chilean intentions underwent any change when Article 3 of the Treaty of Ancon was negotiated. On the contrary, the Chilean negotiators reaffirmed the demands above mentioned. Foreign Minister Aldunate in a statement to the Chilean Congress explained that circumstances obliged the negotiators to change the formula in the treaty, but not to obtain anything greater than the previous demands. Minister Aldunate said in the Report of the Ministry of Foreign Affairs of Chile for 1883:

> "Given these antecedents—he was discussing the three propositions relative to the conditions of peace above mentioned—the policy of our Foreign Office in this serious affair was characterized at different times and fixed in advance from the moment when the discussions commenced which resulted in the treaty signed October 20th last. If it was possible for the government to introduce considerable modifications of form and even in substance in the clauses of the treaty of peace, this would be, in any event, on conditions conserving and respecting the most essential part of the bases proposed on three successive occasions, in 1880, 1881 and 1882. This in fact was brought about" (p. lxxviii).

In his work *Los Tratados de* 1883-84, he says:

> "The action of the negotiators of 1883 was confined within the limits of the peace preliminaries which took place. . . . Given the criterion of the politico-moral conceptions of the government authorities of 1883, they could not repudiate these precedents, which would have been equivalent to destroying the unity of action of our Foreign Office and of infringing the duties which public faith imposes on states. It could not be forgotten, on the other hand, that the conditions of peace proposed by Chile were in substance identical before and after the occupation of the capital of Peru, viz.: the unconditional and absolute cession of the province of Tarapacá, a

payment of a pecuniary indemnity of 20 million pesos guaranteed by the pledge of the territories of Tacna and Arica. It was within this inflexible framework that the negotiators of 1883 had to act and if it was permissible to seek modifications in form more effectively to guarantee the rights of Chile, it was not possible for them to impose on the vanquished country new and onerous sacrifices" (pp. 47–8–9).

If the Chilean negotiators entertained the intention of retaining the Peruvian provinces by way of pledge for a money indemnity, why did not Article 3 embody this agreement? The reasons appear to have been, first, that the United States Department of State opposed Peru's being required to pay an indemnity in money over and above the annexation of Tarapacá and second, that Peru refused to deliver its provinces by way of pledge or sale or in any other way implying the loss of its sovereignty or the impairment of the dignity of its population.

The Chilean Minister of Foreign Affairs in the above-mentioned Report of the Ministry declares (Appendix, Exhibit 46):

". . . the formula selected during the Arica conferences and in the Protocol of Viña del Mar, which was to the effect that Chile would retain possession of these territories until an indemnity of 20 million pesos should have been paid by Peru, had been negatived by the worthy and important American chancery.

"Public statements, both in Chile and in Peru, were made on this subject in the name of the Department of State of Washington by its Extraordinary and Special Representative, Mr. Trescot. This diplomatist had declared that it was illogical to exact a double indemnity, both in territory and in money. . . ."

It will be recalled that thereupon the Chilean

Government sought to obtain the provinces by purchase for 10 million pesos. Minister Aldunate continues:

> "We proposed, therefore, without loss of time, to substitute the indemnity demanded, guaranteed by Tacna and Arica, for an absolute and immediate purchase of the region by Chile."

He then states that the Peruvian negotiators absolutely refused this proposal, considering that the proposition constituted

> ". . . an unjustified and unacceptable divergence from the various peace terms proposed by Chile from the time of the Arica Conferences to that of the Protocol of Viña del Mar."

Minister Aldunate states in his work *Los Tratados de* 1883–84:

> "With an unshakable tenacity, the Peruvian negotiators eliminated, above everything, the idea of leaving these territories in the power of Chile in the character of pledge until the payment of a pecuniary indemnity of 20 millions.
>
> "It is with even more energy that they repulsed from the beginning the idea of selling these territories to Chile . . . proclaiming with absolute certainty that no government would be found in Peru which could accept a treaty which directly or indirectly would extend the territorial amputations an inch beyond the territories of Tarapacá."

And he adds:

> "There came thus a moment in which it did not appear reasonable for us to insist obstinately and inflexibly on either one of the two formulas proposed, namely: the indefinite possession of the territories in question by way of pledge or their subsidiary sale to Chile" (pp. 53–4).

The circumstances described thus brought about a compromise solution. The Peruvian negotiator proposed a new formula which contained three essential ideas: (*a*) the extension up to a fixed term (10 years)

of the occupation of the provinces; (*b*) a consultation of the will of the people; and (*c*) a payment of 10 million pesos at the moment of their delivery. "This was a compromise adopted of necessity," says the Chilean Minister of Foreign Affairs.

By this formula, in effect, each of the two states believed that they escaped in part, at least, the extreme demands of the other; each believed that Article 3 by its three provisions preserved in a measure their respective positions. The Chilean Minister estimated that Chile in abandoning the provinces at the end of 10 years would obtain, in any event, the indemnity of 10 million pesos, increased by the proceeds of the revenues which the possession would have procured. In the meantime, he thought that the objective of indemnity had been obtained with, in addition, the possibility of acquiring the sovereignty of the provinces if Chile was successful in the plebiscite. He states expressly:

> "But if these expectations, which are only mentioned as probabilities, should not be realized; if the plebiscite should give back the territorial region of Tacna and Arica once more to Peru, it would behoove Chile's loyal and honorable policy to respect the verdict of those peoples, confining herself to the receipt of the pecuniary compensation of ten million pesos which, added to the revenue which we would already have obtained through our occupation of those territories in ten years, would exceed, without a doubt, the amount we had demanded in this same connection, in the conditions proposed in 1880 and 1882." (Appendix, Exhibit 46.)

Referring to these ideas, he says:

> "Instead of retaining merely by way of pledge the disputed territories until the payment of the pecuniary indemnity exacted, we would prepare for a just expectation leading to the acquisition of

definitive sovereignty and in last analysis we would preserve the right to a pecuniary indemnity of 10 million pesos, in the event that the result of the plebiscite is unfavorable to us." (*Los Tratados de* 1883–84, p. 56.)

It thus appears that the Peruvian negotiators refused positively to leave the territories with Chile as a pledge or to sell them. Article 3 as finally concluded eliminated both these ideas. That Article, therefore, so far as concerns Tacna and Arica, was the outcome of a conflict of two opposing ideas of the contracting parties—the Chilean idea of a pledge agreement with respect to an indemnity, the Peruvian idea of rejecting every additional territorial dismemberment, avowed or disguised, to save the liberty and dignity of the provinces. The two contracting states left in the Article a marked trace of their motives and intentions. Peru saved its provinces in submitting unwillingly to the obligation of paying 10 million pesos at the time of their recovery; Chile assured its indemnity by means of an agreement which did not expressly give them an indemnity but which procured that end just as effectively.

In the light of this recital of the negotiations of 1883, confirmed as they are by the Chilean Minister of Foreign Affairs who negotiated the Treaty, it would seem that the assertion first advanced by Chile in 1905 and reiterated in 1908 that Article 3 of the Treaty constituted a disguised annexation must be regarded as devoid of all foundation. In reason it contradicts every step in the negotiations and every idea expressed by the negotiators. The words of the Article definitely exclude the idea of retention by way of pledge or annexation. The treaty could not be clearer in this respect than it is and the effort to read into it a meaning exactly opposite to its express words can hardly be successful.

The allegation that the provision with respect to the plebiscite was designed to simulate a popular vote and was not intended to elicit the real vote and will of the people must be regarded as hardly less than immoral. It has already been amply refuted (*supra*, p. 154). If the plebiscite was to be fictitious, it would either nullify the Treaty or operate as a reversion of the territory to Peru, for the legal limit of the Chilean occupation was ten years and at the end of that time the territory should have reverted to Peru without the holding of the alleged fictitious plebiscite. This in fact is the legal result of the failure to hold the plebiscite, not because a fictitious plebiscite was contemplated but because Chile's obstructive methods have prevented the holding of any plebiscite. It is only now, when she regards the policy of Chilenization and the expulsion of Peruvians as sufficiently advanced, that she contemplates with equanimity, thirty years after the plebiscite should have been held, the holding of the long-demanded plebiscite. The only example of a fictitious plebiscite is that in the Treaty of Prague of 1866. The subsequent Treaty of Vienna took from the populations of Schleswig their previous right to express themselves in favor of Denmark, but this constitutes no analogy for the express language of the Treaty of Ancon.

To assert that international treaties providing for plebiscites are concluded to deceive the popular will is untrue to fact. The plebiscites held under the Treaty of Versailles refute this Chilean allegation, beyond revival. It is true that plebiscites have been occasionally corrupted by violence and fraud, but this fact hardly aids the Chilean contention. Never before has a government proclaimed openly that a plebiscite was merely a disguised conquest. If occasionally a country has acted on this theory by a corrupt plebi-

scite, Chile is the first country openly to avow that such was its intention. We shall presently present a brief historical discussion of the international plebiscites of modern times, in order to establish their underlying principles and to show not only that they do not sustain the Chilean contention of a disguised annexation but on the contrary that they effectively defeat the Chilean contention, disregarding for the moment the express and unequivocal language of the Treaty of Ancon. The Chilean occupation of the Peruvian provinces of Tacna and Arica was not the result of an annexation. Denmark, on the other hand, made an absolute cession to Prussia in 1864 of its rights over Schleswig. So Germany ceded to Belgium in 1919 by the Treaty of Versailles, its rights in the districts of Eupen and Malmedy. Peru never ceded its rights over Tacna and Arica to Chile. The sovereign claims of Peru over its people in those territories remained intact. The people were not denationalized, because there was no transfer of territory nor a voluntary separation. They were merely placed under military occupation for ten years, an occupation which legally expired in 1894. They did not then become Chilean nor has anything since occurred to make them Chileans or the territory Chilean, for the Treaty of Ancon expressly provides that at the expiration of the ten year period, the provinces were "to continue to constitute a part of Peru" unless the population by plebiscite and popular vote manifest their will "to remain definitely under the dominion and sovereignty of Chile." There is in the treaty neither a sale, lease or pledge nor any other legal contract other than an accord with respect to the administration of the territory, subject to a condition subsequent within a fixed period of ten years.

A vote of the people and at a particular time (1894) were both essential conditions for a change in the

national character of the territory or of the people. The effect of the non-performance of these conditions due to the additional fact that Chile prevented their performance will be considered presently. It may here merely be stated that the result is to terminate the precarious and contingent tenure of Chile and to restore these territories and people unencumbered and unconditionally to their ancient and continuous Peruvian sovereignty. It becomes, therefore, important to note, as Sir Thomas Barclay points out in his study on the subject of the "Conflict of the Pacific," that "The provision concerning the plebiscite was inserted manifestly in the interest of Chile, the status quo having left this territory Peruvian, unless a popular decision to the contrary at the end of 10 years should make it Chilean."

The period of ten years in the conditions for holding the plebiscite was as essential and fundamental a condition as the plebiscite itself. It would be absurd, as Señor Chacaltana and Señor Seoane pointed out, to postpone the plebiscite until it suited Chilean interest to have it held. A plebiscite under such conditions would be as effective a violation of the treaty as the failure to hold any plebiscite at all. Laurent in his *Principes de Droit Français* makes the statement, which is one of universal law, that "a condition fixed as to time makes time an essential part of the condition." He adds, "If the time elapses without the event happening, the condition cannot be realized and the contract remains null and void."

About forty years have now elapsed since the ratification of the Treaty of Ancon and nearly thirty since March 28, 1894, when the ten-year period at which the plebiscite should have been held, expired. The people of the provinces have not expressed their desire to become Chilean. On the contrary, the unanimous admissions of the Chilean authorities that down to

1910, at least, the population was overwhelmingly Peruvian shows conclusively that had a plebiscite been held in 1894 or anywhere near that time, the result would have been decisively in favor of Peru. This has been openly admitted by many Chilean publicists. It explains the Chilean refusal to permit a vote to be held in proper time and constitutes, on Chile's part, a practical waiver of her expectations under the plebiscite. The plebiscite contemplated by the treaty may for all practical purposes be regarded as having been held and to have resulted virtually in Peru's favor.

The provinces, it is respectfully submitted, reverted unencumbered to Peru, as a matter of law, even though Chile had not prevented the holding of the plebiscite and if this had been due to extraneous events. The one condition on which Chilean sovereignty could rightfully be asserted in Tacna and Arica was the performance of the condition that a plebiscite be held in 1894 and that it result favorably to Chile. This not having happened, Chile's precarious tenure terminated.

But more especially is this the fact when, as the evidence discloses, Chile arbitrarily prevented the holding of the plebiscite by opposing any reasonable arrangement to bring it about and subsequently destroyed the conditions for an honest plebiscite by artificially changing the voting population. The arbitrary refusal to permit an agreement to be reached was the most effective method to prevent the holding of the plebiscite. It is important to remember that the provinces were never ceded by Peru to Chile, but were held merely for ten years under an occupation which terminated by the terms of the treaty itself in March, 1894. It would be extraordinary if the condition set of holding the plebiscite in Tacna and Arica could indefinitely suspend the Peruvian nationality of those provinces, by the mere will of the occupying

state. This would transform the Treaty providing for temporary administration into a unilateral annexation. It would in time of peace constitute a conquest without precedent. It would be a shameful and dishonest conquest because it would have been done by deception and fraud. Even Bismarck did not consider the title of Germany to Schleswig complete under the Treaty of Prague, because the Danish population was to have been consulted. He therefore obtained an annulment of that treaty by an article in the subsequent treaty with Austria.

The failure to hold the plebiscite in Tacna and Arica at the time fixed in the Treaty of Ancon completely destroyed, as a matter of law, all further Chilean tenure in Tacna and Arica, because such failure violated the express terms of Article 3 of that Treaty. There is no logical support whatever for the contention that this failure strengthened the Chilean title, as the Chileans have occasionally professed to believe. Several years after the lapse of the legal term of occupation in 1894, when Chile still realized that Peruvian consent to the extension of that term was essential (witness the proposals of Señor Sanchez Fontecilla, *supra*, page 120), Chilean officials declared that the sentiment of the Peruvian population was still entirely opposed to union with Chile.

The reason actuating the Chilean Government in preventing the conclusion of a protocol for the holding of the plebiscite in 1894, and for years thereafter, is apparent. The Chilean Government officially knew, from reports of its representatives in Tacna and Arica, that, in 1894, and for years thereafter, the population was still overwhelmingly Peruvian, and that a plebiscite would certainly result in victory for Peru. This is shown not only by the secret documents printed in El Comercio, the authenticity of which was confirmed

by Sr. Bello Codecido, now Minister of Foreign Affairs of Chile (Appendix, Exhibits 135 and 136), but by official publications of Chile. These include Reports of the Minister of the Interior of Chile, containing official reports made to him by representatives of the Chilean Government in Tacna and Arica, including the Governors of the provinces.

In Volume 3 of the *Memoria del Interior*, 1894, an official Chilean publication, the report of the Governor of Arica to the "Intendente" of the province, dated February 20, 1894, is officially published. It is there declared, on page 29, that, "the great majority of the inhabitants are aliens [i. e., non-Chileans] and such few Chileans as are to be found are mainly public officials."

In Volume 4 of the *Memoria del Interior* for 1895, page 8, it is stated that, "In Tacna there neither are nor have been other Chileans than some of the public employees." The same report stated further that it became necessary to resort to aliens to fill public positions. This is taken from a report of the "Intendente of Tacna to the Minister of the Interior of Chile, dated April, 1895.

The same volume, on page 22, contains a letter to the Minister of the Interior of Chile, from Vicente Prieto, a high official of the Province of Tacna, dated February 19, 1895, which contains the following statement:

> "The territory of Tacna and Arica was submitted to the legal regime by law of October 31, 1884; but having regard to the special situation in which this province finds itself, the transitory and conditional domination which this Province is under, and the *scarce number of Chileans residing in it*, have been the causes for its being considered not advisable to grant its inhabitants the right of voting. . . . No municipality exists in this prov-

ince; there is only a body of mayors, and *their appointment does not emanate from popular vote but instead depends upon the will of the President of the Republic.*" (Italics ours.)

In the same volume, on page 32, containing a report from the Governor of Arica to the Minister of the Interior, the statement is made, of date March 25, 1895, that . . . "the great majority of the inhabitants of this province being (are) of Peruvian nationality, who naturally sympathized with one or another of the factions struggling in Peru."

In the official Chilean census reports of 1895, page 9, is found the statement that the provinces of Antofagasta, Tarapacá and Tacna "had, in 1885, a population a!most entirely alien, which is included in ours since the War of the Pacific"; this, of course, so far as Tacna and Arica were concerned, referred chiefly to Peruvians.

Further supporting the fact that Tacna and Arica in 1894 and 1895 were overwhelmingly Peruvian, and that the Chilean Government well understood this to be true, we quote from the *Memoria del Interior* of Chile of 1892. In this report, Volume 3, page 35, is a letter from the "Intendente" of Tacna to the Minister of the Interior containing the following statement:

> "The last census of the Republic shows in the Department of Arica 8,229 inhabitants, of which 3,255 reside at the Port. The special condition in which these territories find themselves gives the results that these figures only count 100 nationals, the majority of whom are public employees, almost the total population being Peruvian."

While this statement applies to 1892, it supports the admissions quoted showing the population to have been overwhelmingly Peruvian in 1894 and 1895.

These admissions of overwhelming Peruvian popula-

tion in 1894 and 1895 are doubtless further confirmed by records in the possession of the Chilean Government.

The Peruvian census of 1876 gave the following as the population of Tacna and Arica, and Tarata:

	Inhabitants	*Aliens*	*Chileans*
Tacna.....	19,245	3,726	137
Arica.....	9,041	1,720	112
Totals.....	28,286	5,446	249
Tarata.....	7,723	320	00

thus showing the total number of Peruvians in Tacna and Arica to be 22,840, and the total number of Peruvians in Tarata 7,403, while the number of Chileans was only 249. The total number of foreigners in Tacna and Arica was 5,446, and in Tarata 320.

The Chilean census of 1907, page 4, shows that in the year 1885, the population of Tacna and Arica was 29,523. Tarata had been wrongfully added to Tacna, as shown above, and the population of Tarata is given as 3,286. This showed therefore a decrease in the population of Tacna and Arica of 2,049 from 1876 to 1885. The Chilean census of 1895 showed the population of Tacna and Arica to be 24,160, a still further loss in population of 2,077. Even if this loss of population in the twenty years from 1876 to 1895, amounting to 4,126, had been all of Peruvians, it would have left a population in 1894 and 1895 of 18,714 Peruvians out of a total of 24,160.

The original official publications, of the *Memoria del Interior*, of the Peruvian census of 1876, and of the Chilean census of 1895 and 1907, hereinbefore quoted, can be found in the Library of Congress and the Library of the Pan American Union, and will be furnished to the Honorable Arbitrator, if desired.

The organized effort at Chilenization did not begin until a number of years after 1895. The reports we

have quoted show that there were practically no Chileans in the provinces before or during 1895, and that the provinces were at that time overwhelmingly Peruvian. It was the same old Peruvian population of 1876, with the losses incident to Chilean administration; but the total foreign population, even in 1876, was less than 5,500, and there were only 249 Chileans. It is evident that the population in 1894, when, under the Treaty of Ancon, Chile was required to permit the plebiscite, and for some time thereafter, continued to be, overwhelmingly Peruvian.

These Chilean official reports go even further than to declare the population to have been overwhelmingly Peruvian in 1894 and 1895. Our quotation from Volume 4 of the *Memoria del Interior*, page 22, of February 19, 1895, uses this language:

> "But having regard to the special situation in which this Province finds itself, the transitory and provisional domination which this Province is under, and the scarce number of Chileans residing in it, *have been the causes for its being considered not advisable to grant its inhabitants the right of voting.*" (Italics ours.)
>
> "Peru, dada la situacion especial en que se encuentra esta provincia, la dominacion transitoria i condicional a que se halla sometida i el escaso numero de chilenos que en ella residen, han sido las causas por las cuales no se ha creido conveniente acordar a sus habitantes el derecho de sufrajio."

This is an official declaration from Vicente Prieto, a ruling official of the province, that the inhabitants of the territory of Tacna and Arica were in 1895 so anti-Chilean that it was not deemed advisable to permit them to vote, even for municipal offices. This being true, they certainly would have voted against Chile in a plebiscite. It is very evident that Chile could not possibly have won at that time had the plebiscite been held, and that the Chilean Government's knowl-

edge of that fact from its own officials in the provinces fully accounts for Chile's unwillingness to permit a protocol to be concluded for the holding of the plebiscite.

It was this fear of the will of the inhabitants which gave birth both to the unwillingness of Chile to have the plebiscite held and to the policy of Chilenization above described. The Chilean Government believed that by expelling the Peruvian inhabitants and substituting Chileans for them, Chile might some day consent to a popular vote without risk, although even then they have always insisted that the administrative machinery shall be controlled by Chilean officials. A plebiscite held thirty years after the time when it should have been held completely nullifies the provisions of the Treaty of Ancon and would lavishly reward the bad faith exhibited in the policy of Chilenization. The good faith of a popular vote, which essentially underlay the Treaty of Ancon, would be completely betrayed and it would in effect constitute an admission that Chile was privileged to submit to the plebiscite at any time she saw fit, legalizing in the meantime the outrageous acts of persecution and oppression which have marked the policy of Chilenization. If this were to be sanctioned one may well ask what was the purpose of the provision in the Treaty of Ancon for a plebiscite at the end of ten years? To sanction a plebiscite to be held today "in the present circumstances" would in effect legalize fraud and add to the disrespect for treaties.

Sir Thomas Barclay in a study on this question has stated:

> "The non-execution of Article 3 of the Treaty of Ancon is not imputable to Peru which in 1898 had accepted a protocol regulating the question of the plebiscite as prescribed by that article, a protocol which was rejected by Chile. The non-

execution is imputable to Chile by this rejection. Up to that rejection that state (Chile) might have been able to argue that the execution given to Article 3 of the Treaty of Ancon by this protocol, covered anterior faults which were imputable to Chile, in consequence of any delay of execution. Its refusal has not only rendered it responsible for the non-execution but has revived all the rights of Peru against Chile which the protocol might have covered."

It is proper here to observe that the Chilean government has not denied the measures known under the name of Chilenization, such as the closure of the Peruvian schools and churches, the expulsion of Peruvian ministers of religion, the expulsion of Peruvian nationals and workmen, the importation of Chilean workmen and colonists, the concentration of troops and the grant of railway and irrigation concessions, etc. They have merely fallen back on their professed and pretended right to undertake these measures. As has already been observed, they appear to have believed that these measures came within their powers of administration, although occasionally, as in 1905, they have gone further and asserted the unqualified sovereignty of Chile in Tacna and Arica. The invalidity of these assertions has, it is believed, already been demonstrated. What these measures and the Chilean confession thereof do show is that the provision for the plebiscite has not been executed in good faith but, on the contrary, that there has been a definite Chilean policy to defeat the provision for the plebiscite by every form of arbitrary and unconscionable device. Such a fraudulent violation of the express words of a treaty should be publicly condemned and not in any way condoned or justified, as they would be by a provision for a plebiscite to be held under the conditions prevailing today in the captive provinces.

Admitting, as is believed to be incontrovertible, that

Chile's obstruction and recalcitrance have prevented the timely holding of the plebiscite (the first complete refusal having come in 1898, on the failure to ratify the Billinghurst-Latorre protocol), certain legal conclusions necessarily follow.

For Chile, the plebiscite and its successful outcome in her favor, was a condition precedent to the inception of Chilean sovereignty in Tacna and Arica. For Peru, Article 3 of the Treaty of Ancon having provided that Tacna and Arica continued "to constitute a part of Peru," the holding of the plebiscite was a condition subsequent for the divesting of Peruvian sovereignty. By the non-holding of the plebiscite, therefore, Chilean sovereignty has never begun and Peruvian sovereignty has never terminated in the territory in question.

Even if Chile had had nothing to do with the failure to hold the plebiscite, the mere fact that the only condition upon which her occupation of Tacna-Arica could continue beyond ten years, namely, the holding of a plebiscite successful to Chile, has not occurred, would serve to induce the legal consequence that her occupation since March 28, 1894, is illegal. But when we have the additional fact that Chile herself prevented the performance of the only condition upon which her sovereignty could rest and her continued stay be legalized and Peruvian sovereignty be divested, it follows *a fortiori* that Chile has by her own act waived the condition, and can derive no advantages from her unlawful act. By a universal principle of municipal law, Chile, having prevented the performance of the condition upon which her sovereignty might have rested, is deemed to have waived the eventual advantage that performance might have conferred, and on the other hand, is deemed to be bound by any eventual

disadvantage. The condition, the plebiscite, is deemed to have been held and to have resulted against her.

That this is a universal principle of the Roman law, of the modern civil law and of Anglo-American law can be readily demonstrated. The Treaty of Ancon constituting a contract between the two countries parties thereto, it is submitted that the universal principle of the municipal law of contracts just adverted to may properly be applied in international law to determine the legal relations arising out of the breach or failure of performance of a condition in that treaty. It is in this way that international law has grown and it is believed that a universal principle of law can not be denied application in international law.

In the early Roman law, the rule prevailed that a condition was to be regarded as fulfilled or performed whenever its performance had been intentionally prevented by him who was interested in its non-fulfillment or non-performance. In the Roman *Corpus Juris Civilis*, whence it found its way into the modern civil law, Ulpian had established the rule (L. 161, D. 50, 17): *In jure civile receptum est, quotiens per eum, cujus interest conditionem non impleri, fiat quominus impleatur, haberi ac si impleta conditio fuisset.* (See also L. 24, D. 35, 1.)

Through the renowned French jurist Pothier this rule was adopted in the French Civil Code (Article 1178) and thence found its way into other codes of the western world. Pothier in his *Traité des Obligations* (v. II, p. 101) says:

"It is a rule common to all conditions in contracts that they must be deemed to have been fulfilled when the obligor bound under condition has prevented fulfillment thereof: *Quicunque sub conditione obligatus, curaverit ne conditio existeret, nihilhominus obligatur*" (L. 85, §7 et seq. de Verb. oblig.).

The plebiscite in 1894, the condition contemplated by the Treaty of Ancon, not having been fulfilled by reason of Chile's failure to permit it, it must be regarded as having been held and its result be deemed naturally to have been unfavorable to Chile, a result which the actual holding of the plebiscite could hardly have failed to register. As already observed, knowledge of that fact explains Chile's opposition to its being held. Chile, knowing that the population was in 1894 and even in 1898 overwhelmingly Peruvian, declined to permit the plebiscite, which would have terminated her rights, to be held, and yet seeks to derive advantages from that fact.

Chile cannot derive advantage from its own wrong (*nemo auditur turpitudinem suam allegans*), hence the plebiscite must be deemed to have resulted, Chile having prevented it, in a vote unfavorable to Chile and favorable to Peru. This is a legal consequence which a universal principle of law attaches to Chile's prevention of the plebiscite.

Article 1178 of the French Civil Code, which has its counterpart in practically every modern civil code, provides:

> "A condition is deemed to have been fulfilled if the obligor (debtor) who is to be liable in the event of the thing being done or happening, has prevented it happening or being done."

G. Baudry-Lacantinerie in his *Traité Théorique et Pratique du Droit Civil* (v. II, p. 33) in commenting on this section says:

> "In order that the condition may be deemed fulfilled, it is not necessary that the promissor shall have prevented it intentionally."

He cites certain decisions of the French courts in support. To this we can only add that if an unintentional act of prevention produces the result which

Peru has always claimed, *a fortiori* an intentional act would produce this result.

Larombière, Chief Justice of the Court of Limoges, in his celebrated work, *Traité Théorique et Pratique des Obligations* (v. II, p. 138 *et seq.*), in his commentary on article 1178 says:

> "If it is true that he who ought to fulfill a condition cannot be compelled thereto, it is also true that he may do nothing to prevent the fulfillment thereof. If then the obligor prevents by fraud, wrong or negligence the performance of the condition under which he is to be bound, he violates the law of the contract. The law provides that if the obligor, bound under a condition, prevents the performance thereof, the condition is deemed to have been fulfilled."
>
> "This principle is embodied in a large number of texts of the Roman law and is merely a consequence of the rule of law that one may always regard as performed that which your adversary has prevented from being performed: '*In omnibus causis pro facto accipitur id in quo per alium mora fit quominus fiat.*'"
>
> "This provision is general and permits of no distinction between conditions negative, positive, precedent, subsequent, casual, mixed or personal . . . ."
>
> "It is moreover immaterial in the application of article 1178 whether the act of the obligor was done with or without the intent to prevent the performance of the condition. It suffices that he prevented it."
>
> "If the obligation has been contracted under condition that an event occur within a definite fixed time, the condition is regarded as not performed if the time has expired without the event occurring, and it will be regarded as performed, if the obligor, bound under that condition, has prevented the performance thereof within the time fixed."

F. Laurent, the renowned Belgian jurist, in his *Principes du Droit Civil Français* (v. XVII, p. 89) says:

> "When the parties stipulate for a condition, the obligee has a right subject to an event, which may or may not happen. The chance which the obligee (creditor) has cannot be taken from him by the obligor (debtor) otherwise his right would depend solely on the obligor (debtor); that is to say, he has no right. When then by his own act the obligor prevents the performance of the condition, he violates the right of the obligee."

Thus, Peru as the obligee was entitled to the chance of the favorable outcome of a plebiscite in her behalf, a chance of which she was totally deprived by Chile's acts preventing the plebiscite. Hence, under universal principles of law, Chile must be deemed to have waived the plebiscite and it must be regarded as having been held and as having resulted in Peru's favor, as it undoubtedly would have resulted, as Chile by her acts tacitly admitted, had it been held.

Demolombe in his *Traité des Contrats* (v. II, p. 331) says:

> "It is then, on the part of the obligor bound under condition, a breach of the contract to prevent the condition from being performed; it is a violation of his promise, rendering him liable to reparation; and the execution of the contract, when it is possible, constituting the most adequate reparation of the injury caused to the other party, the code decides, in effect, that the contract shall be executed as if the condition had been performed."

Peru can thus claim that the plebiscite must be regarded as having been performed and as having resulted in her favor.

See Bufnoir, *Théorie de la condition en droit romain*, pp. 99–100.

Gavet, *Origine et développement de la condition resolutoire* (1897).

Dimitresco, *De la condition résolutoire dans les contrats* (1906), p. 30 *et seq.*

Article 1119 of the Spanish Civil Code contains a provision to the same effect as article 1178 of the French code, namely, "a condition will be deemed to have been performed, if the obligor voluntarily prevents its performance." Commenting thereon, Professor Felipe Sanchez-Roman in his *Estudios de Derecho Civil* (v. IV, p. 123) says:

> "If the condition is not fulfilled by the fault of the one concerned in its performance, it will be regarded as having been performed, and the obligation will survive with the same effects as if the condition had been performed."

The same result is established by the comments of Manresa in his *Comentarios al código civil* (v. VIII, pp. 121, 124), by Falcón in his *Derecho Civil Español* (v. IV, p. 22) and by Scaevola in his *Comentarios y Concordancias al código civil español* (v. XIX, p. 619).

Article 162 of the German Civil Code provides:

> "If the fulfillment of a condition is prevented in bad faith by the party to whose disadvantage it would operate, the condition is deemed to have been fulfilled (Wang's translation)."

On this section, Ernest G. Schuster, in his *Principles of German Civil Law* (p. 114), says:

> "A party who, in violation of the requirements of good faith, promotes or frustrates the fulfillment of a condition, is not allowed to benefit by the effect of such unlawful interference. . . . If the fulfillment is frustrated in such manner, the result is the same as if the condition had been fulfilled."

See also Staudinger's *Kommentar zum Bürgerlichen Gesetzbuch* (7th ed), v. I, p. 609.

Probably no rule of law has had more uniform or universal support. So far as known, it is adopted in every civilized system of law, a result which is not surprising in the light of the moral and practical basis of the rule. It has been adopted in effect in the following codes:

Holland, arts. 1290–1292, 1294–1296:
Italy, arts. 1160–1162, 1166–1169:
Portugal, arts. 679, 683:
Switzerland, Code of Obligations, arts. 176, 177:
Mexico, arts. 1336, 1451, 1452 and 1470:
Guatemala, arts. 1451, 1453 and 1457:
Venezuela, arts. 1126, 1228, 1133–1135:
Colombia, arts. 1533–1535, 1537–1539:
Bolivia, art. 1167:
Chile, arts. 1482, 1487, 1489:
Argentina, arts. 530–542, 571, 572:
Peru, arts. 1282, 1285, 1286:
Uruguay, arts. 1369–1371, 1374, 1379–1381:

No less positive than the civil law is the Anglo-American law on this point. In the case of *Young v. Hunter* (1852), 6 N. Y. 203, it was held:

> "A party whose acts prevent the performance of a condition precedent, cannot avail himself of such non-performance as a defence to an action against him."

In the case of *Mansfield v. Hodgdon* (1888), 147 Mass. 304, 307, it was held:

> "As the covenanter by his own conduct caused a failure to comply with the condition in respect of time, he waived it to that extent."

So, in the case of *Louisville & Nashville R. R. Co. v. Goodnight* (1874, Ky.), 10 Bush. 552, 554, where the Company offered a reward for the "conviction" of a

certain offender and then by failure to prosecute, made "conviction" impossible and refused the reward, the Supreme Court of Kentucky declared:

> "If the conviction of the person named was a condition precedent, it was a condition not to be performed by the parties who made the arrests; and if the happening of the event upon which their right to the reward depended was hindered or prevented by the act of the Company, such hindrance was in law equivalent to the completion of the condition precedent, and the Railroad Company is liable on its contract to pay the reward, although it may have acted in the matter with the utmost good faith."

To the same effect see the cases of:

Ripley v. McClure (1849), 4 Exch. 345.

Batterbury v. Vyse (1863), 2 H. & C. 42.

United States v. Peck (1880), 102 U. S. 64.

Pneumatic Signal Co. v. Texas & P. R. R. Co. (1910), 200 N. Y. 125.

United States v. United Eng. & Const. Co. (1914), 234 U. S. 236.

Corbin's edition of Anson on Contracts (1919), section 366.

Williston, Cases on Contracts, v. II, p. 285, note.

Williston on Sales, section 448.

Costigan, The Performance of Contracts, a Summary of Conditions in Contracts (Chicago, 1911), pp. 36, 40, 43.

It thus seems that there is a unanimity of opinion as to the legal consequences of the operative fact of preventing the performance of a condition from which the one preventing as well as his opponent may derive a benefit or a disadvantage. Depriving his opponent of all chance to benefit by performance of the condition, it must be deemed to have been performed to his opponent's advantage and he himself be deemed either

to have waived performance and to accept an unfavorable outcome, or to have had performance and the result to have been against him. Once admit that Chile's acts were influential in obstructing the plebiscite and the legal consequences follow with unerring precision. Having prevented the performance of the only condition upon which her sovereignty in Tacna and Arica could commence, Chilean sovereignty is never deemed to have commenced; having prevented the performance of the only condition upon which Peruvian sovereignty could be terminated, Peruvian sovereignty is deemed never to have terminated. Chile, therefore, since March 28, 1894, is a legal trespasser in Tacna and Arica and the sovereignty of Peru is vested there, unencumbered by any Chilean claim, either to occupation or sovereignty. *Nemo ex sua delicto meliorem suam conditionem facere potest; nemo ex proprio dole consequitur actionem; ex dole non oritur actio.*

Both in law and equity, Peru is entitled not only to the prompt return of the provinces of Tacna and Arica, but to an adequate indemnity for the wrongful deprivation of her territory for a period of thirty years.

Chile in its Red Book of 1908 and since has sought to show that provisions for plebiscites in treaties are mere formalities, not genuinely intended to be carried out, and if carried out, constituting mere disguised annexations. To justify this conclusion, the Chilean Red Book refers to the treaties containing provisions for plebiscites of the last 200 years, and professes to draw from these treaties the conclusions that plebiscites were meaningless formalities and disguised annexations, and also presumably seeks by these historical analogies to justify its assertion that all the inhabitants, nationals and foreigners, of plebiscitary territory are entitled to vote and that the plebiscite is to be managed by the annexing country.

Apart from the fact that the objective of the Chilean argument is to show that Article 3 of the Treaty of Ancon means the exact opposite of what it says, the historical analogy completely fails to support the Chilean contention. If any further evidence were necessary to prove this conclusion as to the international law of plebiscites, it is furnished by the Treaties of 1919 which brought to a close the European War. To demonstrate the historical inaccuracy and falsity of the Chilean view of the conclusions disclosed by history, it is proper briefly to analyze the plebiscites of modern times.

Of the modern plebiscites there are two distinct phases:—the first embraces the plebiscites of the French Revolution, which commenced with those of Avignon and of Venaissin in 1791; then came those of Savoy and Nice, of the Belgian Communes and of Liège, of the Communes of the Palatinates and of Alsace, terminating with those of Mulhouse and Geneva. All these localities were annexed after a plebiscite. Certain of these plebiscites, like those of Avignon, Savoy and Nice, involve genuine popular movements; of the others, the same cannot be said. If in these the plebiscites constituted a deception, it merely challenges the good faith of the parties therein involved and not the good faith of the institution of the plebiscite. At all events, in these plebiscites there was no provision, such as that in the Treaty of Ancon, expressly stipulating that the tenure of the occupying country was limited to ten years, at the end of which time a plebiscite was to be held determining the permanent sovereignty.

It is, however, in the second half of the nineteenth century that we come to plebiscites of more immediate interest. The Italian plebiscites of the Revolution of 1848 in Lombardy, Venice, Parma, Modena and

other cities, were the preliminaries to the Italian federal union of 1850, 1860 and 1870. The popular vote always preceded the occupation. Other plebiscites in the Italian cities, such as those in Naples, Sicily and Rome were the result of enthusiasm for national unity, but even those plebiscites did not involve effective changes of sovereignty.

Plebiscites of the latter character were undertaken in Savoy and Nice in 1860, in the Ionian Islands in 1864, in the Danish West Indies in 1867, in the Island of St. Bartholomew in 1877, and in Norway and Sweden on their separation in 1905. Even more important at the present moment, however, is the fact that the institution of the plebiscite has just been reconsecrated by a series of applications under the Peace Treaties of 1919. Prior to 1919 the Treaty of Ancon stood almost alone among treaties which openly made sovereignty depend upon the will of the people. In the cases between 1860 and 1880 above mentioned, the provision for a plebiscite was to take effect subsequent to the renunciation of sovereignty and territorial rights, the vote being designed to confirm a previous cession. This was done to satisfy the dictates of conscience, but the fact is that the treaties under discussion all involve a complete and unequivocal transfer of sovereignty from one sovereign to another before and in the absence of any provision for a plebiscite. This very essential and radical difference between these treaties and the Treaty of Ancon which, far from constituting a transfer of sovereignty, was expressly made to avoid a transfer of sovereignty, is alone sufficient to defeat the Chilean contention and to render these treaties useless as analogies for the Treaty of Ancon.

The plebiscite in Savoy and Nice, stipulated in the Treaty of Turin of March 24, 1860, involved the renun-

ciation by the King of Sardinia of his rights in these provinces and his consent to their reunion to France under reservation of the approval of the people. France did not take possession of the provinces until the vote had been taken. The plebiscite took place in time of peace, without a preliminary conquest, without any immigration from the annexing nation, and under the control of the authorities of Sardinia, the ceding state. Those who took part in the vote were the natives of the territory ceded and those domiciled there who were children of natives.

The vote in the Ionian Islands took place after review by the powers signatory to the Treaty of Paris of November 5, 1815, under a protocol dated August 1, 1863, establishing the reunion of the Ionian Islands with Greece, under a reservation of the consent of the Ionian Parliament.

The plebiscite in the Danish West Indies ceded to the United States was agreed upon in the Treaty of October 14, 1867, under a stipulation analogous to that of the Treaty of Turin, namely, a cession between Denmark and the United States subject to ratification by the ceded population. The treaty, however, under which the plebiscite was held, with the vote confined to natives alone, was not ratified by the United States. Cession was not effected until a subsequent treaty which contained no provision for a plebiscite.

The retrocession of the Island of St. Bartholomew to France took place under a treaty of cession of August 10, 1877, between Sweden and Norway, on the one hand, and France on the other. It was made subject to a vote of the people. The principal characteristic of this treaty is that France ratified the treaty only after the vote had been effected. Only Swedish nationals took part in the vote.

These several plebiscites were irrefutably analyzed

by Señor Seoane, Peruvian Minister in Santiago, in his response to the Chilean Minister of Foreign Affairs, Puga Borne (Appendix, Exhibit 89), when the latter undertook to sustain the Chilean thesis that a plebiscite was a disguise for an annexation.

Finally, the plebiscite which sanctioned the separation of Norway from Sweden took place under a vote of the Norwegian Parliament, which demanded the separation, and of the Swedish Parliament, which consented thereto, both under reservation that the Norwegian people be called upon for their approval of the act.

In all these plebiscites prior to the World War of 1914, the principal operative fact is that a cession of sovereignty was made between the two sovereigns prior to the holding of the plebiscite, therefore rendering these treaties useless as precedents for the Treaty of Ancon. The fact is that prior to the plebiscites provided for in the Treaties of 1919, the Treaty of Ancon was unique. But even in the plebiscites before the World War the important fact appears that the plebiscite was held under the administrative jurisdiction of the ceding state, and not of the ultimately annexing state, and that the qualified voters were confined to the natives of the territory, and, in one or two cases, the domiciled children of such natives.

The plebiscites under the treaties terminating the World War, which furnish the best modern interpretation of the institution of the plebiscite, may be divided into three classes: first, the plebiscites properly so-called, such as those in Schleswig, East Prussia, Upper Silesia, Klagenfurt and Burgenland; second, those which may be characterized as ratifications, such as those in Eupen and Malmedy; and finally, an intermediate type of special character, by virtue of its origin and effect, namely, the plebiscite to be held in the Saar in

1935. (Appendix, Exhibit 160.) We shall leave out of account the spontaneous and unconventional plebiscites held in the Aaland Islands, Vorarlberg and Bessarabia.

The object of the Treaty of Versailles in organizing the plebiscite in Schleswig was to compel Germany to fulfill the obligation undertaken in Article 5 of the Treaty of Prague, 1866. In Northern Schleswig, therefore, a vote en masse was provided for, whereas in the rest of Schleswig the treaty prescribed a vote by communities. In both zones it was made obligatory to evacuate troops and the German authorities, and the territory under plebiscite was placed under the administration of an international commission. The right of voting was conferred on individuals, natives of the zone under plebiscite, on those who had been domiciled there since January 1, 1900, and on those who had been expelled by the German authorities (Article 109 of the Treaty of Versailles, Appendix, Exhibit 160).

A somewhat similar provision is to be found in Articles 94, 95, 96 and 97 of the Treaty of Versailles (Appendix, Exhibit 160), in which provision is made for plebiscites in Allenstein, Stuhm and Rosenberg, Marienberg, and Marienwerder. The treaty provides:

> "The inhabitants will be called upon to indicate by a vote the state to which they wish to belong."

The right to vote is granted to natives and to those domiciled in the territories in question prior to a certain date—in the case of Allenstein, January 1, 1905, in the case of Marienwerder, January 1, 1914. The evacuation of the German authorities and the administration of the plebiscite by an international commission preceded the vote which, for the most part, resulted in a majority in favor of Germany.

According to Article 88 of the Treaty of Versailles, a plebiscite was to be held in Upper Silesia where, again:

"The inhabitants will be called upon to indicate by a vote whether they wish to be attached to Germany or to Poland."

The vote was granted to individuals born in the territory living there or who had emigrated therefrom, and to those who were domiciled there since at least January 1, 1904. Provision was again made for the evacuation of the territory by troops, and the administration of the zone under plebiscite by an international commission.

Article 49 of the Treaty of St. Germain of September 10, 1919, provided with respect to Klagenfurt:

"The inhabitants of the Klagenfurt area will be called upon to the extent stated below to indicate by a vote the state to which they wish the territory to belong." (Appendix, Exhibit 160.)

The Klagenfurt area was placed under a mixed commission of seven members, four from the larger Allied countries, and three from units of the old Austro-Hungarian Empire. The voters were again confined to those who were born in the territory or had obtained domiciliary rights there prior to January 1, 1912. Somewhat similar provisions characterized the plebiscite in Burgenland.

The popular "ratification" in Eupen and Malmedy under Article 34 of the Treaty of Versailles is of an entirely different character from those above mentioned. By that article Germany renounced absolutely in favor of Belgium all her right and title over the territories in the districts of Eupen and Malmedy (Appendix, Exhibit 160). Six months after the coming into force of the treaty, registers were to be opened by the Belgian authorities at Eupen and Malmedy in which the inhabitants of the territory were to be entitled to record in writing a desire to see the whole or part of it remain under German sovereignty. The

results of this public expression of opinion were to be "communicated by the Belgian Government to the League of Nations," and Belgium undertook "to accept the decision of the League." The Belgian Government accordingly, on January 26, 1920, provided for a vote confined to those only whose nationality would be affected by the change of sovereignty of the districts. Others were excluded. An age of twenty-one and domicile prior to August 1, 1914, were necessary qualifications. Of a total population of 63,940 inhabitants, of whom about half had the right to vote, only 271 registered as desirous of German sovereignty. The League of Nations, on September 20, 1920, approved the result of the vote and declared the annexation complete and absolute. The memorandum of the Secretary General of the League adopted by the Council contains the paragraph:

> "The mode of popular consultation in the districts of Eupen and Malmedy, provided for in Article 34 of the Treaty of Versailles, differs entirely from the other plebiscites provided for in that treaty. In fact, the popular vote in this case is in no sense a plebiscite in which both parties are called upon to vote. By the Treaty the right to vote was given only to those who desire to protest against the cession."

The plebiscite of the Treaty of Versailles which most closely resembles that of the Treaty of Ancon, is the plebiscite to be held in the Saar Valley in which Germany, under Article 49 of the Treaty (Appendix, Exhibit 160), renounced "in favor of the League of Nations, in the capacity of trustee, the Government of the Saar Basin." At the end of fifteen years from the coming into force of the Treaty of Versailles "the inhabitants of the said territory shall be called upon to indicate the sovereignty under which they desire to be placed." Articles 34 to 39 of Chapter 3 of the annex

to Section 4, Part 3, of the Treaty contain the detailed provisions with respect to the conduct of the plebiscite, of which the most important, for the present purpose, are, that the plebiscite is to be held under the administration of the League of Nations, and that the right to vote is confined to "all persons, without distinction of sex, more than twenty years old at the date of the voting, residing in the territory at the date of the signature of the present treaty."

It will be apparent from the above recital of the modern precedents on plebiscites that there is a great difference between those which preceded and those which followed the World War. The plebiscites of the former period, aside from that contemplated in Tacna and Arica, are characterized (*a*) by having been preceded by a treaty of cession, the inhabitants being invited to confirm the transfer of sovereignty; (*b*) by having been carried out under the authority of the ceding state; and (*c*) the vote being regarded as a political act of the inhabitants, taken under the same conditions as prevail in a parliamentary election. It is not believed to be true that these plebiscites evidence any coercion by the successful State. The express wording of the treaty provisions under which these plebiscites were held constitutes their principal and vital difference from Article 3 of the Treaty of Ancon and makes the precedent of these plebiscites, except in so far as they disclose the inaccuracy of the Chilean description of or conclusion from them, useless in the consideration of the interpretation or effect of the Treaty of Ancon.

The Chilean thesis as to the historical and practical effect of plebiscites, namely, that they are intended as a meaningless formula to disguise an annexation already made and therefore not intended to be honestly carried out, has received its *coup de grâce*, it is believed,

from the precedents of the plebiscites provided for under the Treaties of Versailles and St. Germain. These plebiscites exhibit the following characteristics:

(*a*) They were not preceded by a treaty of cession. Cession of territory was, except in Eupen and Malmedy, made expressly conditional upon the outcome of the plebiscite and where this was unfavorable to cession, as in Allenstein and Marienwerder, it was not made;

(*b*) They were carried out after complete elimination of the authorities of the two countries interested. They were organized and carried out under an international authority, which guaranteed the free expression of opinion and order;

(*c*) The right to vote was accorded to the natives of the territory, domiciled there or emigrated therefrom, and to those domiciled in the territory who had long resided there (twenty years in Schleswig, seventeen years in Upper Silesia, sixteen years in Allenstein and Marienwerder, fifteen years in the Saar, ten years in Klagenfurt, among plebiscites conditioning a change of sovereignty), in order to guarantee the existence of a permanent bond with the country and to exclude the introduction of new or artificial voters by the victor State. It must also be recalled that in the case of the Saar, where the plebiscite was postponed to a future date named, in this respect most nearly resembling the Tacna-Arica plebiscite, the vote was expressly confined to those resident in the territory at the time of the signature of the Treaty, and for the same obvious reason.

It would seem that these precedents of modern plebiscites effectively dispose of the Chilean contention that they constitute merely fraudulent devices to assure annexation of territory to the victor. Henri Hauser, an authority on plebiscites, in his work on the subject (*Le principe des nationalités*), says:

"A plebiscite cannot be valid unless it is conducted in entire good faith. . . . A plebiscite in a country, a considerable part of the original population of which has been expelled or forced to emigrate, would be a fraudulent plebiscite. Fraudulent also would be a plebiscite conducted in a country into which the conqueror had imported a considerable proportion of his own nationals. For if one accepted a vote registered under such conditions, it would be too easy for the annexing State to modify as it saw fit the composition of the population of the territories annexed and then to invoke, in order to cover its usurpation and legitimate its violence, a so-called popular approval."

The application of these principles, which would seem to respond to the simplest dictates of decency and common sense, to the situation in Tacna and Arica hardly requires comment. The people imported by Chile into the territory subsequent to 1894, when the plebiscite should have been held, are not "inhabitants in good faith." Their immigration was effected to alter and to falsify the popular will and Chile, not denying the facts, has sought to justify it under the extraordinary thesis above mentioned. The Treaty of Ancon contemplated that only the inhabitants of Tacna and Arica in 1894, and then only, would be the ones who would be consulted as to the permanent sovereignty of the territory. Only those persons, whether domiciled, emigrated or expelled, are entitled to vote. But inasmuch as a great proportion of them are now dead or for other reasons impossible to restore to their original homes and domicile in Tacna and Arica, the lapse of thirty years since 1894, during which Chile has frustrated the holding of an honest plebiscite, has so materially and vitally changed the conditions contemplated by the Treaty of Ancon, that it would seem that a plebiscite "in the present circumstances" would be impractical, unfair and unsound.

It is for these reasons that the Peruvian Government respectfully submits that inasmuch as the only just plebiscite preserving the legal and moral interests of both Chile and Peru under the Treaty of Ancon would be one which would reflect the conditions, as to population, prevailing in 1894, that a plebiscite "in the present circumstances" should not be ordered by the Honorable Arbitrator.

The Peruvian Government respectfully requests that the Honorable Arbitrator, as incidental to his conclusion that no plebiscite shall be held "in the present circumstances," may make the findings of fact and law set out in the following summary of the Peruvian Case, for it is believed that such findings will aid greatly in bringing about the equitable solution of this controversy.

Peru respectfully requests that the Honorable Arbitrator find:

1. That Peru transferred to Chile merely the possession and the privilege of administration of Tacna and Arica for ten years only, and that hence Peruvian sovereignty in Tacna and Arica has never been lost;

2. That any loss of Peruvian sovereignty in Tacna and Arica was conditional upon a plebiscite in 1894, resulting in Chile's favor, and that such a plebiscite in 1894 was an essential condition to the inception of Chilean sovereignty in Tacna and Arica;

3. That the failure to hold the plebiscite in 1894, as contemplated by the Treaty of Ancon, the failure not being ascribable to Peru, nullifies and renders void the provision of Article 3 for a plebiscite and automatically terminates, as a matter of law, the temporary occupation and possession of Chile, reinstating Peru in the right

to the unencumbered possession and sovereignty of her provinces;

4. That Chile recognized the precarious nature of her possession and her want of sovereignty by her negotiations with Peru looking to a cession, and by her negotiations with Bolivia looking to a transfer of Tacna and Arica to Bolivia, provided Chile obtained sovereignty therein;

5. That Chile's policy to obtain permanent control of Tacna and Arica, while evading the provisions for the plebiscite, is apparent throughout the long history of this controversy; and that Peru, though making numerous concessions from her legal rights in the interests of a settlement, has never waived her legal rights in the premises;

6. That Chile's recalcitrance in refusing to permit the conclusion of a protocol looking to the timely holding of the plebiscite, an essential condition to the foundation of any Chilean rights in the territory after 1894, *ipso facto* forfeits any expectancies she may have had in the territory and makes her a trespasser therein since 1894;

7. That the population of Tacna and Arica in 1894 was approximately 80 per cent Peruvian, and that a plebiscite then held would have resulted in an overwhelming decision by the popular will that the provinces should continue under the sovereignty of Peru;

8. That Chile's wilful prevention of the plebiscite in 1894 and during the years immediately thereafter, with knowledge of the overwhelming preponderance of the Peruvian population, constitutes an admission by Chile that a plebiscite in 1894 would have resulted in Peru's favor and

may be deemed in law as the equivalent of a virtual plebiscite resulting favorably to Peru, and unfavorably to Chile;

9. That by preventing the performance of the only condition upon which Chile's title can rest, Chile has waived the performance of the condition and any advantage it might have brought her and is deemed, in law, bound by any eventual disadvantage, being unable to derive any advantage from her own wrong;

10. That Chile's dispersion of the Peruvian population after 1900, and the subsidized introduction of Chilean citizens constitutes a perversion of the conditions essential to an honest plebiscite of the population as contemplated in the treaty, is a palpable breach of the treaty of Ancon, and alone renders a plebiscite to-day unnecessary, undesirable, impracticable, and unfair;

11. That a plebiscite should not now be held and Peru's unencumbered sovereignty in Tacna and Arica should be confirmed by the award of the Honorable Arbitrator.

The Government of Peru, in the presentation of its case, and while advancing and sustaining its conclusions, has deliberately left unmentioned the most emotional and moral side of this grave South American problem. It has studiously avoided enhancing the merits of its case by invoking the intense patriotic sentiment, which the problem unmistakably involves, that loftiest of motives which is itself the best and most convincing explanation for the consistent attitude of Peru with respect to Tacna and Arica, before and since that peace which the Treaty of Ancon consolidated.

It has adopted this policy through apprehension that the vehement expression of this sentiment might affect

its dispassionate judgment of the events recorded and of the legal consequences derived therefrom.

But though this purpose has, it is believed, been achieved, there is nothing to prevent an expression of its conviction that a study of this troubled negotiation will unfold the heart-rending evidence of the martyrdom of a people, which, since the date of its supposed release from bondage, has desperately struggled to regain its ancient liberty. The Government of Peru is likewise confident that the examination of the undisputed facts of this case will disclose the grave error of a victorious country which, strengthened and enriched by the greatest war indemnity the world has ever known, professed to believe that it could do anything it pleased, and hence sought to increase its territorial conquests in time of peace.

So much for the past. The Peruvian nation, laboriously travelling along a road fraught with countless dangers and tribulations, has reached the present stage, with undiminished faith in the sanctity of its cause and preserving an eternal gratitude for the support and encouragement received from the irredentist provinces themselves during its darkest hours of trial.

During the entire course of this sombre history but one bright ray appears, occasioned by the acceptance by the occupant of Tacna and Arica of the agreement which brings this case before the President of the United States.

For Chile, Tacna and Arica mean the triumph of her ambitious plans; two additional provinces over and above those which she acquired through the war, in other words, a territory which is not now or ever was hers. For Peru, Tacna and Arica imply the recovery of that which is and always has been her own and the ascendency and redemption of the noblest

and loftiest sentiment which animates human society today.

For the whole of America, for the future of her growing nations, there can be no uncertainty; they need the stabilizing influence of a just and moral precedent. The present is not a litigation in which two interests contend with arguments more or less deserving of attention. It is a conflict the solution of which calls for neither compromise nor compensations. On the one hand, we have a wrong effected by physical force; on the other, a right ruthlessly ignored. This is the essence of the case.

Peru confidently hopes that the award of the Honorable Arbitrator will bring about the final solution of this controversy, of the highest political and moral importance to the continent of South America, and will thereby redress an international injustice which has prevailed for thirty years.

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